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# **AUTO FINANCING LEGISLATION**

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## **HEARINGS**

**BEFORE THE**

### **ANTITRUST SUBCOMMITTEE**

**(Subcommittee No. 5)**

**OF THE**

### **COMMITTEE ON THE JUDICIARY**

### **HOUSE OF REPRESENTATIVES**

**EIGHTY-SEVENTH CONGRESS**

**FIRST SESSION**

**ON**

## **H.R. 71**

**A BILL TO SUPPLEMENT THE ANTITRUST LAWS OF THE  
UNITED STATES AGAINST RESTRAINT OF TRADE OR  
COMMERCE BY PREVENTING MANUFACTURERS OF MOTOR  
VEHICLES FROM FINANCING AND INSURING THE SALES  
OF THEIR PRODUCTS**

**JUNE 7, 8, 9, 28, 29, AND 30, 1961**

### **PART 1**

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# AUTO FINANCING LEGISLATION

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WEDNESDAY, JUNE 7, 1961

HOUSE OF REPRESENTATIVES,  
ANTITRUST SUBCOMMITTEE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Holtzman, Donohue, Toll, McCulloch, and Meader.

Also present: Representative James E. Bromwell, of Iowa, Herbert N. Maletz, chief counsel, and William H. Crabtree, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair wishes to read a statement and then we will hear statements from other members of the committee, if they wish to make them.

The Antitrust Subcommittee begins hearings today on H.R. 71, a bill introduced by the Chair, to supplement the antitrust laws by preventing the manufacturers of motor vehicles from engaging in the business of financing and insuring installment sales of motor vehicles. This will be placed in the record at this point.

The bill follows:

[H.R. 71, 87th Cong., 1st sess.]

**A BILL** To supplement the antitrust laws of the United States against restraint of trade or commerce by preventing manufacturers of motor vehicles from financing and insuring the sales of their products

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Automobile Finance and Insurance Act of 1961."*

The term "motor vehicle" shall mean passenger cars, trucks, buses, and station wagons.

The term "commerce" shall mean commerce among the several States of the United States, or with foreign nations, or in any Territory of the United States as in the District of Columbia, or among the Territories, or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

SEC. 2. It shall be unlawful for any corporation, its subsidiaries, officers or employees, engaged in the manufacture and sale in interstate or foreign commerce of motor vehicles, or any person or corporation which acts for and is under the control of such corporation, to own or maintain any facilities for financing the sale at wholesale or retail of motor vehicles manufactured by such corporation or to own or maintain any facilities for issuing insurance policies of any kind in connection with the sale or purchase of motor vehicles manufactured by such corporation: *Provided*, That nothing herein shall prevent such corporation, when making sales of its motor vehicles at wholesale, from permitting the purchaser to pay for such motor vehicles within a reasonable time after purchase at no additional charge.



SEC. 3. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 4. The terms of this Act shall take effect one hundred and twenty days after the date of enactment.

SEC. 5. No provision of this Act shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

This bill is aimed at correcting what has been described as a monopolistic tendency in the automobile industry and a similar tendency in the businesses of financing and insuring automobile purchases, which contravene the national antitrust policy against monopoly and monopolistic power.

The thrust of the bill principally affects General Motors Corp., the Nation's largest manufacturer, and its wholly owned financing subsidiary, General Motors Acceptance Corp. It also affects Ford Motor Co. and its recently reactivated financing affiliate, Ford Motor Credit Co., as well as any other automobile manufacturer that may wish to enter the business of financing or insuring installment sales of cars.

H.R. 71 has been introduced in response to numerous allegations, first, that General Motors utilize its wholly owned financing subsidiary, GMAC, as an instrument of sales policy, thereby obtaining an undue competitive advantage over other manufacturers of motor vehicles, and, second, that the tremendous resources of General Motors give GMAC a discriminatory and monopolistic advantage over independent automobile sales finance companies.

Attempts to require the large automobile manufacturers to refrain from financing and insuring the sales of their products have a lengthy history. General Motors established GMAC as a wholly owned financing subsidiary in 1919. Thereafter, Ford acquired a stock interest in Universal Credit Corp. and Chrysler entered into contractual arrangements with Commercial Credit Corp., in which it also acquired a small stock interest.

On May 27, 1938, indictments under the Sherman Act were returned in the District Court for the Northern District of Indiana against General Motors, Ford, Chrysler and their respective subsidiaries and affiliates, charging conspiracy to restrain trade in automobiles by coercing automobile dealers to finance car sales through the specified subsidiaries and affiliates. Ford and Chrysler were willing to submit to consent decrees. Accordingly, on November 7, 1938, civil complaints under sections 1 and 4 of the Sherman Act were filed against these companies and their financing affiliates and on November 15 consent decrees were entered in these civil actions. The consent decrees against both Ford and Chrysler provided expressly that unless the Government should be successful in requiring General Motors to divest itself of GMAC by January 1, 1941, Ford and Chrysler would be free to acquire and retain "ownership of and/or control over or interest in any finance company \* \* \*" On the same day (November 15, 1938)

the criminal proceedings against Ford and Chrysler were "nolle prossed."

General Motors, however, insisted on litigating the criminal indictment against it, and in November 1939, was convicted and fined. The Court of Appeals affirmed the conviction. The Supreme Court denied certiorari October 13, 1941, and denied petition for rehearing.

On October 4, 1940, a civil complaint against General Motors and GMAC was filed in the District Court of the Northern District of Illinois under section 1 of the Sherman Act and sections 2, 3, and 7 of the Clayton Act, alleging a conspiracy to restrain commerce in automobiles by coercing dealers to finance car sales through GMAC, and seeking an order requiring General Motors to divest itself of GMAC. World War II interfered with the prosecution of this case. In 1952 the litigation was settled by a consent decree which did not require divestiture.

Meanwhile, after a number of court extensions of the provisions of the consent decrees involving Ford and Chrysler, these companies became freed of any legal obligation to refrain from owning finance subsidiaries. Recently Ford reentered the field of factory-controlled car sales financing through the instrumentality of Ford Motor Credit Co. Chrysler, so far as can be learned, has not taken a similar step.

It thus appears that after 20 years of litigation under the existing antitrust laws the situation complained of initially remains largely unchanged. In this context, numerous complaints have been received to the effect that monopoly power in the automobile industry and in the financing and insurance businesses continues on the part of General Motors and that Ford and other automobile manufacturers appear likely to resort to similar monopolistic arrangements in sheer self-defense. It is therefore argued that special legislation is needed to solve this problem.

For that purpose, in 1959 hearings were held before the Senate Antitrust and Monopoly Subcommittee on S. 838, introduced by former Senator O'Mahoney and S. 839, introduced by Senator Kefauver and the late Senator Hennings, measures designed to prevent auto manufacturers from engaging in the sales finance business. In the same year the Chair introduced H.R. 4256, 86th Congress, identical with the bill presently under subcommittee consideration, but the Congress expired before definitive action could be taken.

In the present Congress, Senator Kefauver has introduced S. 1982, a bill similar to H.R. 71.

At these hearings the subcommittee will seek to elicit the information needed for a thorough understanding of the competitive problems created by manufacturers financing and insurance of the retail time sales of automobiles and for a legislative solution of these problems, if one is needed.

**Mr. McCulloch.** Mr. Chairman, as the ranking minority member of the subcommittee, I wish to make a short statement.

The House Committee on the Judiciary, which has jurisdiction over antitrust legislation, is, of course, vitally concerned with maintaining competition in all areas of the Nation's economy.

In our congressional role of overseeing the proper functioning of the Antitrust Division of the Department of Justice and the Federal Trade Commission, in addition to that of suggesting legislation when needed, I take great personal pride.

In my opinion, the Sherman Act and related statutes are the best legislative plan yet devised for maintaining competition in a free economy. The genius of the Sherman Act is that it obviates direct Government regulation and substitutes economic rules of fair play, which are generally understood and respected by the business community. Those who transgress these rules are prosecuted, and if found guilty, after being afforded due process of law, they are punished according to law.

I am disturbed by the bill, which is before the subcommittee. It might be used, if I may use the expression, to "get around" the 1952 consent decree between the Federal Government, General Motors and General Motors Acceptance Corp. As such, it departs completely from a court administered antitrust enforcement program, which has proven to be effective and practical since the enactment of the Sherman Act in 1890.

Instead, enactment of H.R. 71, or its kindred act in the Senate, and subsequent similar legislation, will substitute direct intervention by Congress in those cases, when for political or for other purposes, dissatisfied persons desire to modify the judgment of the Department of Justice or the Federal Trade Commission, or even the courts.

If basic weaknesses exist in our antitrust statutes and enforcement policies, I suggest we consider appropriate general legislation; but that we not set a precedent through this legislation by entering the antitrust enforcement field on a case-by-case basis. Our task at the congressional level is to set general policy; it is not to relitigate consent decrees arrived at in arms' length bargaining and consented to by the Government.

I might add that just 2 years ago this subcommittee concluded an investigation into the consent decree program of the Department of Justice in which the minority of the subcommittee suggested:

(1) Requiring prior public notice before entry of consent decrees, and

(2) Limitation of the duration of consent decrees in order to permit the Government freedom to pursue whatever action becomes necessary at a later date, as the facts warrant.

It is noticeable that during those hearings very little mention—practically none—was made of the GM-GMAC consent decree, which H.R. 71 would have the undoubted effect of setting aside and providing the relief of divestiture, which the Government did not seek at that time.

Considered further, until we have before us compelling evidence that legislative action is presently necessary, I doubt the wisdom of telling any industry that it is to be prohibited from engaging in otherwise lawful but related business activities which contribute to the ultimate success in the sale of its products.

And that goes for other products as well as for automobiles.

In the particular example before us the prior hearings in the Senate did not indicate that divorcement of General Motors Acceptance Corp. from General Motors, or the newly formed Ford Motor Credit Co. from Ford, would result in ultimate benefit to the consumer—and I want to say as an aside that I have some interests in protecting the rights of consumers in this country.

Indeed, there is considerable testimony in the Senate hearings that manufacturers maintain financing services principally because

of the general lack of advantageous credit terms for the purchasers of new and used automobiles.

There is no guarantee or even reasonable assurance that automobile finance subsidiaries, if divorced from their parent companies, will be able to, or desire to, continue to offer lower rates for interest and insurance on automobile installment contracts. In this event, the Congress will indeed be shortsighted in disregarding the financial interest and concern of the ultimate consumer, whose interest I believe we are duty bound to accord a very high priority.

Notwithstanding all of the foregoing, I will keep an open mind on the proposal before us, however, always being primarily concerned about the best interest of the consumer, who, so many times, is the forgotten man.

The CHAIRMAN. Mr. Meader?

Mr. MEADER. Mr. Chairman, as a representative from the State of Michigan, this subject matter is of great interest to me and of extreme importance to our State. I represent four counties in the southern part of Michigan in which the predominant economic activity is the manufacture of motor vehicles and motor vehicle parts. Each of the three largest automobile manufacturers have operations in my district. Chrysler Corp. has its proving ground, General Motors has its transmission division, it makes the Corvair and General Motors trucks, Ford Motor Co. has parts plants at Ypsilanti, Rawsonville, and Monroe.

The statistics of the Michigan Employment Security Commission show that approximately 40 percent of the industrial employment in my district is in the manufacture of motor vehicles and parts.

For example, this issue of February 15, 1961, shows that in the labor community of Jackson, out of 10,900 employees engaged in manufacture in the durable goods industry, 4,000 are in the manufacture of motor vehicles and equipment. Accordingly, anything which will inhibit the manufacture and sale of motor vehicles will be detrimental to an economy already harassed economically by governmental meddling and social experimentation, and I do not need to dwell upon the difficulties the State of Michigan has been experiencing in recent years economically and financially.

Conversely, anything which will facilitate the sale of motor vehicles and increase automobile production and employment will benefit Michigan and my congressional district.

The field of automobile financing which has a direct effect upon the volume of production and employment in the automotive industry is a rather sizable free enterprise activity. I understand there is some \$14 billion worth of automobile paper outstanding, and it is interesting to note that in contrast to the housing industry, this is all private capital and does not require any governmental financial assistance.

The central question raised by this legislative proposal is whether a manufacturer may facilitate the sale of his product by dealer and consumer financing. Interesting antitrust aspects of the legislation are, in my opinion, secondary but also important. Some of the questions raised are those of vertical integration, diversification of enterprises, domination of an industry, coercion of dealers and consumers, free and open competition and cornering of the market.

I say the antitrust aspects are secondary because already consent decrees in antitrust suits presumably inhibit restrictive trade prac-

tices, and if they exist, no new legislation or litigation is needed, merely contempt proceedings.

My decision on this proposed legislation will be guided by two main considerations.

First, the welfare of the consumer. Will this bill result in his paying more or less to finance his car?

Second, and this follows from the first, will this proposed legislation aid or injure the motor vehicle industry and those whose livelihood depends on it, as well as the innumerable industries and occupations which directly or indirectly are allied to motor vehicle transportation?

As with any innovation, I approach this proposal with skepticism, believing the burden of proof is upon those who want to change the existing order, who suggest limitations and interference with the sphere of discretion of the private individual and his voluntary business associations, who wish to tamper with and reshape a viable, thriving, existing system.

I have stated these views to give notice to the witnesses in these hearings that I would like them to address themselves to the questions I have raised in the course of their testimony, and provide the facts and considerations which will clearly resolve any doubts concerning them in the public interest.

The CHAIRMAN. The Chair wishes to rejoin by making the following statement: The 1952 consent decree which has been mentioned, in my opinion, fails to protect the public interest.

The only purpose of the original suit filed against General Motors and General Motors Acceptance Corp. was to obtain divorcement of one entity from the other. This purpose was utterly abandoned in the consent decree, and in my estimation it was a very strange performance, the Sherman Act and the Clayton Act, as far as that case was concerned or that is the attempt to divest as far as those acts are concerned, was utterly frustrated.

Furthermore, this suit against General Motors to divest, resulting in the consent decree, this is very important, I tell my colleagues, may be, I don't say it will be, it may be res adjudicata as to any future attempt at divorcement, so that the matter, if it has any evil, cannot be, may not be remedied possibly in the courts, and therefore consumers over the country and the general public, who are vastly interested, may find themselves in the position where no relief can be had because of that consent decree under the antitrust laws.

Now, if the evil, if evil there be, cannot be stamped out under the antitrust laws, what in the world is the public to do?

What in the world are the consumers to do, unless they have recourse to Congress to possibly stamp out that evil, if evil exists, by changing the statute?

I did not intend to get into a controversy here at the very inception. My statement indicated that many complaints have been filed.

I did not give my own views on the matter, but I feel I had to give my views now in view of the statements that have been made by my colleagues.

Our first witness this morning will be Mr. Paul Jones, chairman of the Executive Committee, American Finance Conference, Wilmette, Ill.

Mr. Jones, we will be very glad to hear you.

**STATEMENT OF PAUL JONES, CHAIRMAN OF THE EXECUTIVE COMMITTEE, AMERICAN FINANCE CONFERENCE**

Mr. JONES. Mr. Chairman and members of the House Judiciary Committee, I am grateful for this opportunity to appear before your committee in support of H.R. 71.

I have listened to the remarks that the chairman has made, and I have listened to the remarks with high regard for the remarks of Mr. McCulloch and Mr. Meader, and I agree completely that this is a serious bill to enact and that it ought to be enacted only after careful consideration and with open minds, and with the realization that the No. 1 objective is for the benefit of the people, the purchasers, the consumers of this country, and our general economy.

House bill 71 provides, in brief, that it shall be unlawful for a motor vehicle manufacturer to own a corporation engaged in sales, financing, and insurance of automobile motor vehicles.

The effects of this bill and the reason for my support of it, the effects would be to dispossess General Motors, gentlemen, of the tools that have enabled General Motors to dominate the great American automobile industry and to create conditions incompatible, sir, with our American culture, economic beliefs, and specifically incompatible with the free marketplace.

The CHAIRMAN. Where are you reading from?

Mr. ROGERS. We have a statement you filed.

Mr. JONES. I will not be reading completely from that statement.

It is right here on the top of page 2. I skipped all about who I was in the interests of time.

I would rather come here just as a citizen of the United States. I think that is the highest priority and title that I could possess and could imagine.

Mr. MEADER. Mr. Chairman, the entire statement will go in the record, I assume.

Mr. JONES. The statement will be filed; yes.

The CHAIRMAN. That statement will be accepted for the record. (The entire statement of Mr. Jones appears at p. 61.)

Mr. JONES. The need for this legislation is based on these facts that we will explain:

General Motors years ago created side incomes for its dealers from factory-owned sales finance and insurance subsidiaries that have practically no acquisition costs. These incomes roundout five pockets of dealer income, all controlled by GM. Two of them are delayed and act as a pension would to hold the dealers for GM.

These side incomes, being free of acquisition cost and requiring only simple administrative expense, were greater than dealers in non-GM cars could match from independent finance companies and insurance companies which had normal expenses.

To increase its advantage, GM has created subsidies for its finance subsidiary.

One subsidy alone packs into the cost of every product sold by GM, at least \$1 for each \$100 of sales price, or \$40 on a \$4,000 new car.

Furthermore, there is not one new-car sale out of 10,000 that GMAC finances for GM cars that escapes the finance pack, as defined by GM's own statement before the Federal Trade Commission.



We will show that GM has used the finance pack as a merchandising tool to create a monopoly in the automobile business.

Through the holding power of these five pockets of income and the subsidies, GM has created a monopoly among the automobile dealers of this country.

The auto dealer pool is frozen. There is no mobility between GM dealers and non-GM dealers. GM dealers would be foolish to switch to non-GM franchises and endanger these special incomes and particularly the delayed incomes. GM, like all potential monopolists, must be as adept at turning off their power as turning it on. Therefore GM does not dare to take dealers from other manufacturers to the full extent that it could.

Now what happens for the public when GMAC is independent?

As important as it is that GMAC's services, resting solely on their own merits, will be available to non-GM dealers, the real importance is that the logjam in dealers will be broken.

The GM dealer can move to non-GM franchises and take his finance source with him.

The dealer will not fear losing the lush profits out of the financing reserves that are held by GMAC on its books. The GM dealer will not fear the loss of replacement of cars and parts and repairs for the cars the dealer has insured. The dealer will then be free to move.

Non-GM dealers would be strengthened. Their numbers would increase, and the non-GM factories would be strengthened by this because their lifeblood is their dealer organizations.

The benefits would not be revolutionary, but gradually all manufacturers would become strong. Competition would be on price, and administered prices would be eliminated.

Prices then would start to go down. GM would price to make normal profits.

We would be shipping cars out of this country instead of in.

With our domestic market strengthened and market restored, jobs would be created in South Bend, Ind., in Racine, Wis., in Detroit, and in the tens of thousands of other towns in the land which are touched by the auto industry.

Finally, and most importantly, if we are not working for a free marketplace we don't belong here. We are ready to stand or fall on our ability to do business in a free marketplace. We think the automobile manufacturers should have to be equally committed to a free marketplace.

Now, these remarks you do not have.

As far as I am concerned, all other reasons for this legislation disappear into oblivion by comparison to what this bill will do for the American public and our economy.

The need for this legislation is based on these facts that we will explain.

General Motors, years ago, created side incomes for its dealers from factory-owned sales, finance, and insurance subsidiaries that have practically no acquisition costs. These incomes roundout the five pockets of dealer income all controlled by General Motors, and the only manufacturer that has such control.

Two of them are delayed and act as a pension to hold the dealers for GM. These side incomes, being free of acquisition cost and requiring

only simple administrative expense, were greater than dealers in non-GM cars could match from independent finance companies and insurance companies which had normal expense.

The CHAIRMAN. What is meant by "acquisition cost?"

Mr. JONES. Acquisition cost in the finance business would be similar to sales cost. For example, I am also in the manufacturing business and we have to acquire our business, by sales methods, I mean we have to sell our products, and you men know what it costs, I believe, for any industry to sell their products.

It will cost from 30 to 40 to 50 percent just for sales cost.

Now, in the finance business we buy paper. We acquire it, and it is called acquisition cost in manufacturing, which would be similar to sales cost, and it is substantial.

If sales expenses can be eliminated then you are certainly at an advantage in the competitive market. There is nothing I would like more than have my manufacturing company without any sales expense.

I could certainly make it tough on another competitor.

Now, the record will show that General Motors, in the early days—and I have been in this business for 40 years, my company is now celebrating its 40th anniversary—in the early days General Motors got their business by coercing dealers and forcing dealers to do business with them, and I went through that period.

It is unbelievable, the actions that they took to force dealers to do that business with GMAC.

Mr. McCULLOCH. Mr. Chairman, might I interrupt there.

Do they continue to apply this pressure on their dealers?

Mr. JONES. You bet they do, only it changes. I will touch that, only it changes.

Mr. McCULLOCH. Will you touch it in detail?

Mr. JONES. You bet, I will. It is just as effective today, Mr. McCulloch, as it ever was. But let me go on with this.

Mr. McCULLOCH. Does the Ford Motor Company apply pressures, improper pressures, on its dealers?

Mr. JONES. I am going to tell you this industry in its early days, in the early days—

Mr. McCULLOCH. I am particularly interested in the present time and a reasonable period prior thereto, say, 5 years.

Mr. JONES. The Ford Motor Co. has not had a finance company for 5 years.

Mr. McCULLOCH. I understand. They just reorganized.

Mr. JONES. You are asking me a question. They just started their finance company and they are getting a pretty good start, but I would like to talk about General Motors.

Now, because of coercion—and they were prosecuted for this; they were indicted before a Federal grand jury; I did not indict them; they were indicted before a Federal grand jury of people, they were tried before a jury, and they were convicted, and their conviction was taken to the Supreme Court because they coerced and forced dealers in the most un-American manner to do business with them.

Now, when they did that—

Mr. McCULLOCH. Just a moment, please.

Mr. JONES. I want to make this point.

Mr. McCULLOCH. Mr. Chairman, just a moment.

We have, or will have in the record that General Motors was indicted, tried and found guilty. Has General Motors been carrying on the practice of coercing its dealers since that time.

Mr. JONES. There are two kinds of coercion, Mr. McCulloch.

Mr. McCULLOCH. Well, has General Motors continued coercion since that time? You can answer "yes," if you wish and then you can develop it.

Mr. JONES. The kind of coercion that I was speaking about in the early days, that specific kind of coercion is very rare today.

Now, would you like to know about—

Mr. McCULLOCH. I would like to know the coercion at the present time. We want to include in the record every fact that bears upon the necessity for the proposed legislation.

Mr. JONES. The coercion in the old days was this. It was overt coercion. The coercion today is covert coercion. Even Ford, when they went to the Supreme Court of the United States to get the right to amend their consent decree in order to have a finance company—and this has only been just a few years ago—that they said the same thing I say now about the covert coercion.

They (Ford) made the statement that an automobile manufacturer cannot operate without a finance company, if General Motors has one.

That is their statement. I will read it to you in a little while.

They also said that a General Motors man walking into a GM dealer salesroom is the same as a GMAC man, or a GMAC man walking in and calling on a dealer is the same as a General Motors man. Now, that is your covert coercion.

These dealers after years, you know, know what coercion is, just as policemen, in the early days, carried billy clubs and guns. They do not have to any more. You stop at the stop signs because you know you are supposed to, and these General Motors dealers stop at the stop signs just as definitely today as they ever did, and that is why they have 85 percent of the business.

Mr. MALETZ. Mr. Jones, are you saying that the relationship of GMAC and General Motors is coercive per se?

Mr. JONES. That is true. I say that, and so did Ford Motor Co. I have never and will never be able to make a more persuasive statement before any committee and no one else will be able to make a more persuasive statement before a committee about the activities of General Motors than Ford Co. made before the Supreme Court of the United States, explaining why they had lost sales because they did not have a finance company.

They (Ford before the Federal courts) also pointed out that back in 1938 when all three of them were indicted, General Motors, Ford, and Chrysler, and their affiliated finance companies, that Ford was willing to sign a consent decree and they did sign a consent decree, in which they were willing not to have a finance company.

Chrysler also was willing not to have a finance company.

But it was dependent upon General Motors not having a finance company, and they (Ford before the court) said unless all three of them were separated at the same time, the benefit that would accrue to the public, gentlemen—you can read this—will not be effective.

Ford had been willing to give up a finance company, Chrysler had been willing to give up a finance company, but Ford wants a finance company today because they can't operate without losing sales against General Motors.

The CHAIRMAN. Mr. Jones, I suggest that you start reading your statement, because it is a very long one, and we have other witnesses. Will you start doing that now, please?

Mr. JONES. Thank you, sir.

The effects of this bill, and the reasons for my support of it—the effects would be to dispossess General Motors of the tools that have enabled General Motors to dominate the great American automobile industry, and I think I have already said that.

The CHAIRMAN. Where are you reading from now?

Mr. JONES. At the top of page 2. I will get back to this: You wouldn't be able to find the next statement which I will file, four pages. I want to talk a little about the things that Mr. McCulloch talks about, if I may.

Is that permissible, Mr. Chairman?

The CHAIRMAN. Yes, certainly, but I wish, if you don't mind, that you would read your statement in coherent form so that we can get the basis of your reasoning, together with the background of what you are trying to develop. I think it might be well to go through your statement and then come to these other matters that you want to cover.

You are the first witness and as I understand it you are the leadoff man for the proponents. We want you to explain something about the finance industry since you are a member of that industry, your organization and how it operates, and any difficulties under which your group may labor because of the GMAC and General Motors relationship and because of Ford having a new finance company.

I would suggest that you develop that logically, if you can. Your statement apparently does that.

Mr. JONES. I will refer to the statement then and I will now close with this statement, if I may.

The CHAIRMAN. You don't have to forestall yourself from covering the additional contents of that paper. I don't want to forestall you on anything.

Mr. JONES. I know you don't.

The CHAIRMAN. I want this to be given in order.

Mr. JONES. Do you want me to read these statements which are not in this, or proceed with this statement exactly?

The CHAIRMAN. You can do that, but don't neglect your original statement. That is what I want.

Mr. JONES. I will not, sir.

As far as I am concerned all of the reasons for this legislation disappear into oblivion by comparison to what this bill will do for the American public and our economy.

The CHAIRMAN. What are you reading from now?

Mr. JONES. I thought you said I could do that, but I will get back to this. I didn't know I had to follow this manuscript completely, but I will.

The CHAIRMAN. All right, do it your own way. I am trying to help you, Mr. Jones.

Mr. JONES. I am sure you are, and I am trying to be helpful, too.

I am at the top of page 2, the second paragraph.

Mr. HOLTZMAN. Did you say page 2?

Mr. JONES. What will happen when this bill passes? GMAC will be chiefly owned by people, the present stockholders of the General Motors Corp. What will they do?

Well, the May 20, 1961, issue of the famous Kiplinger Washington Letter states:

GM and Ford can keep their financing firms. The bill to make them sell will fail. Congress thinks GM and Ford charge less than independent firms.

"Congress," that is you, thinks—and prior to the evidence furnished by the people who are to testify, according to Kiplinger, or whoever furnished Kiplinger this choice item, "that GM and Ford," the present corporate owners "will charge less than these same finance companies will charge," when they are owned by the people, who, incidentally, are the present GM stockholders.

That is all that happens.

Today they are owned by General Motors, tomorrow they are owned by the stockholders of General Motors.

MR. HOLTZMAN. You don't think, Mr. Witness, that that is a difference?

MR. JONES. Well, I wonder. I wonder if it is any different.

MR. HOLTZMAN. I am asking you now.

MR. JONES. I think it might be an improvement, sir. I have not lost confidence in people ownership of a corporation.

It is a strange thing to me, as will be shown here by a Ford representative that the only way to own a finance corporation is for another corporation to own it.

There seems to be something mysteriously diabolical here about people-ownership of finance companies.

This sounds like a carryover from the Senate hearings held 2 years ago before the Antitrust Subcommittee where Senators Kefauver, O'Mahoney and Hennings had introduced a similar bill to the one now considered before this committee.

One witness, a high official of Ford Motor Co., held a similar view and he warned that if GMAC was divested there would be higher charges.

Make no mistake about it, there are high finance charges taxed on time buyers of course. His oral statements are worth reviewing. They are gems, but only if they are compared with his written statements, filed quite a time after the oral testimony—filed 2 weeks afterward.

If this committee pursues this information along with other facts, you will find the real gold at the end of the rainbow with regard to the public. The motive for the high charges, the reasons for the origination of high charges in the financing of cars and for its universal use and the reasons for its perpetuation, and last but not least, you will get facts that will enable you, Congress, to determine which of the two are final recipients of these high charges, whether it is the factory, or whether it is the people that are stockholders of finance companies.

Kiplinger said, "Congress thinks GM and Ford charge less than independent firms" or people-owned firms. That, after all, is what an independent finance company is. Let's don't get mixed up. They are just owned by people, not owned by a factory.

At page 212 of the hearings report, first session of the 86th Congress of the Subcommittee on Antitrust and Monopoly, you will

find the following statements. Mr. Yntema, the Ford representative, predicted if GMAC is divorced:

First, that growth of GMAC at the expense of other finance companies and then a rise in finance and insurance rates—

they would first grow and they would raise rates—

neither of these developments is pleasant to contemplate. In any event—this is the key sentence here—after the separation of GMAC from GM, the drive in GMAC to offer a streamlined finance and insurance service at low rates will probably decline and disappear—

because people own that company.

Mr. ROGER. Do you interpret that to mean that if there is not a divorcement of GMAC from General Motors, they will monopolize the business?

Mr. JONES. I think that is what he predicts on the one hand.

Mr. ROGERS. And that after they have monopolized the business, they, in turn, will have complete control of the automobile financing market?

Mr. JONES. That is what he says here, and then they are going to raise rates afterward, these same managers, the same people that run it now.

Mr. ROGERS. Do you agree with that?

Mr. JONES. No, I do not.

Mr. McCULLOCH. We still have the law of the marketplace, do we not?

Mr. JONES. That is absolutely right, and that is all we want.

Mr. McCULLOCH. There is an unbelievable amount of credit available, is there not?

Mr. JONES. What kind of credit, sir?

Mr. McCULLOCH. Consumer credit.

Mr. JONES. There is a remarkable amount.

Mr. McCULLOCH. And the law of the marketplace will ultimately regulate the cost?

Mr. JONES. That is right. It is kind of hard to understand how people who own finance companies can gyp people under those conditions.

Mr. McCULLOCH. Well, there are other credit sources—

Mr. JONES. That is right.

Mr. McCULLOCH (continuing). Other than individually owned finance companies. The national banks of this country are financing a very considerable amount of consumer credit at terms that are not as high as they were 25 years ago, for instance.

Mr. JONES. But with regard to my finance company, my rates have gone down, too; one of the few industries in which the cost to the public has gone down.

Mr. McCULLOCH. You are to be complimented. Again, you are assisting consumers and when you assist consumers, you assist the economy of the country.

Mr. JONES. I agree with you, sir.

Quoting the Ford witness:

The reason I say that is this: Ever since the first lender—



and get this: There is a lot of mistaken ideas about this whole field—there has been a difficulty in this relationship between the lender and the consumer. What we have found out is that there is a great temptation for the lender to take advantage of the ignorance of the consumer, and the consumer is abysmally ignorant in this area, and that is why we have State regulations of the small loan companies. You probably know something about the history of that.

\* \* \* We tried to simplify interest charges and make them intelligible. That is why we have regulations in many States with respect to the charges that can be made.

I think GMAC could make more money than it is now making by charging a higher rate, and I think that in the long run there would be a great temptation to do that. That is the way the other independent finance companies, by and large, operate.

I think at present GMAC is influenced by the desire of General Motors to have this service performed in a streamlined fashion without all the frills. That is a very important factor and I think that it would be a difference. I am afraid you would find GMAC beginning to be like other finance companies. People-owned finance companies, I might add.

At present, in my judgment, GMAC's type of service, that is, the streamline, nonfrill service, is possibly influenced by General Motors, because that is one clear difference between them and the other companies. I can't account for it in any other way. I would be afraid that if they were split off from General Motors, they would then begin to behave like other finance companies; that they would try to make just as much money as they could from package insurance, and whatnot.

\* \* \* All I am saying—

and I disagree with what he is saying here—

is that human beings are human, and if you split off GMAC, some of the pressures from General Motors which are good pressures, which are good for the country, which are good for the consumer, good for the dealer, are going to disappear.

Mr. DIXON. And good for General Motors.

Mr. YNTEMA. All right. But in this particular case what is good for the country incidentally happens to be good for General Motors.

It is apparent that Mr. Yntema has more faith in the goodness of General Motors and their influence to keep low profits and take care of the people of the country than he has in the people who might own GMAC afterwards and how they would treat their neighbors and other people.

Mr. MEADER. Mr. Chairman, I am not sure I understood the witness correctly, but I thought I heard him say while he was quoting from Mr. Yntema's statement that he, the witness, Mr. Jones, agreed with what Mr. Yntema had testified to.

Did I hear you say that?

Mr. JONES. No, you did not.

Mr. MEADER. The reporter says he heard it.

Mr. ROGERS. That is what I heard.

Mr. HOLTZMAN. Do you disagree with him?

Mr. JONES. I certainly disagree—

The CHAIRMAN. Let counsel clear this up.

Mr. JONES. Would you mind reading back where I said it, sir?

The CHAIRMAN. The question is: Do you agree with that?

Mr. JONES. No.

The CHAIRMAN. You do not agree?

Mr. JONES. No. I do not agree that GMAC—and I know the management in GMAC—I do not agree that they need the influence of General Motors in order to be decent people.

Mr. MEADER. Do you agree with any of Mr. Yntema's statements that you quoted from?

Mr. JONES. No, I do not.

Mr. HOLTZMAN. Except that human beings are human, is that right?

Mr. JONES. Yes, I agree that human beings are human, and then I go on.

I am going to make remarks about this statement up above. They are right here.

Mr. MALETZ. Mr. Jones, so that the committee can understand the point, let me ask you these few questions.

Is it not correct that GMAC buys time sales contracts only from General Motors dealers?

Mr. JONES. That is true.

Mr. MALETZ. And there was testimony, before the Senate Antitrust Subcommittee, was there not, that GMAC's rates to General Motors dealers were lower than the rates charged by independent sales finance companies to dealers?

There was testimony to that effect, was there not?

Mr. JONES. Well, there was testimony and then they refuted it.

Mr. MALETZ. Yes, I am not interested—

Mr. JONES. Mr. Yntema said it and then he said it was not so.

Mr. MALETZ. There was testimony to the effect, was there not, that GMAC's rates to GM dealers were lower than independent sales finance company rates to automobile dealers?

Mr. JONES. Yes.

There were qualified statements to that effect.

Mr. MALETZ. All right.

Now, if GMAC were divorced from General Motors, wouldn't its lower rates be available not only to General Motors dealers, but to non-General Motors dealers, as well?

Mr. JONES. Why, of course, so; no question about it.

Mr. MALETZ. And in those circumstances, wouldn't this increased competition result in generally lower finance rates?

Mr. JONES. Sure.

That is why—we are not here—

Mr. MALETZ. Is that not basically one of the points?

Mr. JONES. That is right.

We are not here basically in a fight between finance companies. We want a free marketplace and we are not afraid of that competition.

Mr. MALETZ. And, furthermore, is it your point that you feel that independent sales finance companies, because of the present relationship between General Motors and GMAC, are deprived adequately of opportunity to buy the sales finance contracts of General Motors dealers?

Mr. JONES. That is right.

Mr. MALETZ. And what you are saying, as I understand it, then, is this:

That if GMAC were spun off, all finance companies would have equal access to all dealers, including General Motors dealers?

Mr. JONES. And GMAC would have equal access, too.

Mr. MALETZ. Is that essentially what you had in mind in quoting from Mr. Yntema's statement?

Mr. JONES. Not completely. I felt that the only case that he, Yntema, had made was that the only thing that happens is that when

GMAC is spun off, GMAC is owned by people instead of by General Motors Corp.

The point is, I cannot understand how this action would cause rates to go up, which he says it does, and it is not true.

Mr. MALETZ. What you are saying, Mr. Jones, is that if GMAC actually does charge lower rates to General Motors dealers, the advantage of those lower rates, in the event of a spin-off, would be available to all dealers?

Mr. JONES. To all dealers and all manufacturers.

Mr. MALETZ. To Chrysler dealers, to Ford dealers, to American Motors dealers and Studebaker-Packard dealers?

Mr. JONES. Yes.

This corporation, which is bigger in total loans outstanding than our biggest bank in the biggest money center, New York City, they have more outstandings in consumer paper and wholesale loans than the biggest bank in New York City has outstandings for their thousands of customers.

The CHAIRMAN. Does it not follow, then, that if its rates are lower, General Motors would be loath to see to it that Ford dealers, Chrysler dealers and other competing dealers get that advantage?

Mr. JONES. That is certainly true.

And, furthermore, they would not have to raise the rates to make a nice big profit. Mr. Yntema had just quoted the GMAC profits that amounted to better than 20 percent after taxes. That is better than 42 percent before taxes.

So they do not have to raise rates to get very unusual profits.

Mr. McCULLOCH. If my colleague will yield for just a moment, of course, we are interested in the profit that is returned from this business. At the same time, and in order that we might be well informed in this matter, could you tell us by comparison with bank financing what it costs the consumer to finance a motor vehicle through GMAC or the Ford Motor Credit Co.?

Mr. JONES. Yes, sir. I am surely coming to that.

Mr. McCULLOCH. The comparison of bank financing to independent retail financing?

Mr. JONES. Yes, it will be here.

Mr. McCULLOCH. That will be in the record?

Mr. JONES. Oh, yes, sir.

Mr. McCULLOCH. And we will have many examples of this in order that the average person can look at the figures and determine what it is going to cost him to finance a Ford or a Rambler or a Chevrolet on a 36-month contract, either in Piqua, Ohio, or in New York?

Mr. JONES. Yes, sir, that is right.

I am a country boy from Marion, Ind., and I assure you that I will give you that whole information.

Mr. McCULLOCH. That will certainly be helpful.

Mr. JONES. And you are going to be amazed at the reason why.

The CHAIRMAN. Is it not true, Mr. Jones, that when monopoly sets in, human nature being what it is, and the profit motive being strong, then those prices would be jacked up, and the temporary advantage the consumers have would be wiped out and they would ultimately pay the piper?

Mr. JONES. Very definitely true.

**Mr. McCulloch.** Mr. Chairman, may I make this comment: Of course, we must write for the record that there will be a monopoly in the financing of automobiles, if the parent-subsidiary relationship between GM and GMAC and Ford and Ford Motor Credit Co. is the determinative factor.

However, there are literally thousands of national banks and State banks in this country that are engaged in the financing of automobiles. If my memory serves me correctly, the national banks, the State banks, do more financing, both in amount and in number of contracts, than do either GMAC or Ford Motor Credit Co. or the independent finance companies. As long as there are thousands of national and State banks authorized to engage in this business, and as long as credit remains as it is, even during the tough credit days of a year ago, I am convinced, unless there is evidence to the contrary in the record, that there is no monopoly in the financing of automobiles and further that the law of the marketplace will keep the rates reasonably low.

**Mr. Jones.** I hope, Mr. McCulloch, that you will keep your mind open on that.

**Mr. McCulloch.** Of course.

The **CHAIRMAN.** Just a minute, Mr. Jones, please.

I wish you would watch the actions of the Chair and please don't try to interrupt if you can avoid it. It may be that at present the banks are getting a slice of this business, and there may be competition. But if General Motors Acceptance Corp. and General Motors keep growing, and as I indicated before, monopoly sets in, the temporary advantage that the consumers might have with reference to lower prices may not continue and prices, because of the profit motive, will be raised. I question whether that is in the public interest. With monopoly, it may be that the banks will be unable to compete. In certain parts of the country, as is usually the pattern, GMAC may compete with banks by providing low prices. But after they get control of the market they will raise prices up. That is what is happening in many industries in many parts of the country. That is why we apply the antitrust laws to those kinds of conditions.

**Mr. Rogers.** Mr. Jones, I understand in response to the question asked by Mr. McCulloch that you were going to supply us facts, figures, and information concerning finance charges of GMAC as it relates to their GMAC dealers.

**Mr. Jones.** Yes, sir.

**Mr. Rogers.** Or General Motors dealers.

**Mr. Jones.** Yes, sir.

**Mr. Rogers.** Do you have any information as to whether or not the General Motors dealers give the consumers an added advantage in their trade-in and sale of the automobile if they finance through GMAC? Do you have any information on that?

**Mr. Jones.** We have information on it.

**Mr. Rogers.** And will you supply that?

**Mr. Jones.** Yes, sir.

**Mr. Rogers.** At the time that you supply the information that you promised Mr. McCulloch?

**Mr. Jones.** Yes, sir.

**Mr. Rogers.** Thank you.

Mr. DONOHUE. Isn't the purchaser of the automobile free to have it financed wherever he pleases?

Mr. JONES. Technically, yes.

Mr. DONOHUE. And as Mr. McCulloch points out, if all these lenders, including national banks, are willing to finance at lower rates than GMAC, wouldn't the purchaser be inclined to go to the national bank or an independent lender that might give him a lower rate.

Mr. JONES. I think that like every other choice that a person might prefer even sometimes to pay a higher rate of interest and sometimes they do when they go direct. But that is not the sales finance business, gentlemen. I will proceed here and show you what the sales finance business is.

When people borrow money—I am a banker, I own a bank in Glenview, Ill. I am president of that bank. Many people come into banks and borrow money and go buy a car.

That is not the sales finance business. They are lent money. They might go and use that money for some other purpose.

But I think, if you will permit me to proceed with this, I think I will show you what the sales finance business is.

Mr. DONOHUE. Wouldn't the lender require some collateral such as a chattel mortgage on the car that is being financed?

Mr. JONES. Sometimes, sometimes. We make loans. A gentleman comes in, wants to buy a car, we will make him a loan. Sometimes we take security, sometimes we take his note. Maybe we take Government bonds as security, he takes the proceeds and buys a car.

But the funny thing about this, in the statistics that have been sent in from the banks it says it is for the purchase of an automobile and it isn't actually a sales contract.

So some of the figures you see when you get down to the statistical area isn't exactly the sales finance business.

Mr. DONOHUE. What difference does it make?

Mr. JONES. It doesn't make any difference in that particular instance, but in the sales finance business it makes a lot of difference because a sales finance company does more than just buy paper from a dealer or retail contracts. In the sales finance business, the classical sales finance company that has been over the years that existed from the very beginning do two major things.

They buy retail contracts and they also advance wholesale, funds for wholesaling, 100 percent in most cases of the value of the cars, at very low rates of interest, subsidized I might say, and that is very competitive. Those are the things that I think it is necessary for us to get into the record.

There are some technical things about the finance company.

Now, as you noticed here, and one of the points I want to make and was going to make about Yntema's statement, his statement and all of the statements previous to this lead up to it, that finance companies made loans to people to buy cars and at unconscionable rates.

That is not true. No sales finance company makes loans to anybody to buy a car.

Mr. MALETZ. Mr. Chairman?

Mr. Jones, so that the record will be completely clear, in a typical transaction, as I understand it, is it not correct that a person will buy an automobile from a dealer who in turn will extend credit to this buyer?

Mr. JONES. Yes, sir. A sales contract is entered into between the dealer and the time buyer.

Mr. MALETZ. And then isn't it also correct that the dealer then sells this contract to a sales finance company?

Mr. JONES. That is correct. You don't make loans.

Mr. MALETZ. Which means that the sales finance companies that you are talking about including GMAC do not do business directly with the purchasers; isn't that right?

Mr. JONES. That is right. That would not be the sales finance business.

Mr. MALETZ. Let me ask you this: Do banks customarily do business directly with the purchaser of the automobile?

Mr. JONES. The practices of banks are all over the lot. Some of them are in the sales finance business and some of them do business direct to the public. They are all over the lot, you know that.

Mr. MALETZ. Do banks engage, to a substantial extent, in the purchase of retail sales contracts?

Mr. JONES. There are no statistics on what banks do in the sales finance business properly because it is confused.

The Federal Reserve bank gives the report that is sent in from banks, and as I am in the banking business and I know that the reports include direct loans for it, direct loans for the purchase of cars, but that is not the sales finance business. How much confusion exists here, I do not know, but there is considerable.

Mr. MALETZ. Now, the sales finance companies, as I understand it, are not these small loan companies—

Mr. JONES. No; they are not.

Mr. MALETZ (continuing). Which are engaged in extending retail credit; is that right?

Mr. JONES. No, sir; not in the sales finance business.

Now a company, a given company, might be in the sales finance business, and also have a division that is in the direct loan business, but they never make a direct loan to buy a car or they are out of the sales finance business because the dealers would refuse to do some business with such a company. They conduct the credit sales with time buyers.

Mr. MALETZ. One final point. Isn't it a fact that in the kind of transaction to which I have made reference, where a purchaser buys the automobile from the dealer and the dealer extends the credit, it is the dealer who fixes the interest charges?

Mr. JONES. That is right; the finance charges, not interest charges.

Mr. MALETZ. Or the finance charges.

Mr. JONES. The add on, that is right. He completely fixes it.

Mr. MALETZ. And then the dealer sells this paper to a sales finance company at a discount; is that correct?

Mr. JONES. A sales finance company has nothing to do with the transaction until it buys that contract after it has been entered into between the dealer and time buyers.

Mr. MALETZ. And for the purpose of having the record complete, this means, does it not, that the dealer makes a profit on the time finance charge as well as a profit from the marketing of the automobile?

Mr. JONES. Yes, sir.

Mr. McCULLOCH. May I interrupt?

Mr. JONES. I was about to cover that, and I even have, if you will look on this same subject. Haven't you got a blue folder here in front of you? Have you? Has anyone?

Take out this pamphlet No. 1.

Mr. McCULLOCH. Yes, we have one.

I would like to interrupt at this point because your answer was not definite.

The dealer makes a profit on that phase of the transaction only if he can sell his contract or his note to a sales finance company at a profit. That in turn depends upon the law of the marketplace, doesn't it?

Mr. JONES. You bet it does.

Mr. McCULLOCH. And many times doesn't the dealer sell the contract or note, which is secured by a chattel mortgage, to a commercial bank?

Don't you have some of those notes?

Mr. JONES. Oh, yes, yes, we have both kinds.

Mr. McCULLOCH. And in some instances the dealer makes no profit, except on the sale of the car, isn't that right?

Mr. JONES. Yes, but practices are different in banks.

Let me say this: I have owned this bank for 2 years. Prior to my ownership, all their loans were direct. They didn't buy contracts from the dealers. They refused to do it and there are a lot of banks like that, but a lot of banks do it both ways.

Mr. McCULLOCH. In other words, banks engage in both of these financing practices. They are interested in loaning money at a profitable rate, properly secured, of course, to other people, and they will proceed either way as their policies dictate.

Mr. JONES. That is true.

The CHAIRMAN. Suppose you start reading your statement.

Mr. JONES. Well, I would like to very much.

According to the Ford representative, only Ford and GM would be interested in low profits. It is this gentleman's testimony which caused some Senators and some people to believe that GMAC when separated and owned by people would charge higher rates than GMAC owned by GM. In his testimony previous to this statement he had presented charts showing the annual profits of GMAC which run better than 20 percent after taxes and the charts of other leading large independent finance companies at substantially less profits and some of the smaller ones with half the profit of GMAC.

Yet, he states that if GMAC was divested, it would become like the independent finance companies and want to make the higher profits that the independent finance companies made and actually made this story stick in spite of his own statistics which showed that independents made substantially less than GMAC, and the records are a part of the Senate testimony.

Then, as shown in the statement above, he stated that the operations of the independents were like the "loan sharks," and you have that pamphlet and that is pamphlet No. 1. In this pamphlet—

The CHAIRMAN. That will be placed in the record.

(The document referred to is as follows:)

# WHAT A SALES FINANCE COMPANY DOES

## I

A sales finance company performs three principal functions:

1. It extends loans to retail dealers to inventory the products which they sell. Such loans are commonly called "Whole-sale Receivables."
2. It purchases from dealers, instalment (time-sales) contracts that have been entered into between such dealers and the time buyers of dealers' products. Contracts thus purchased are usually referred to as "Retail Receivables."
3. It sometimes handles the insurance on the products sold by the dealer on a time-price basis. This may be done through an insurance subsidiary or another insurance company.



## II

Loans made to dealers for the purpose of carrying inventories are usually made at the finance companies' cost, or lower, since the finance companies expect to make their profit from the "discount" they get off the face amounts of the time-sales contracts purchased — their retail receivables.

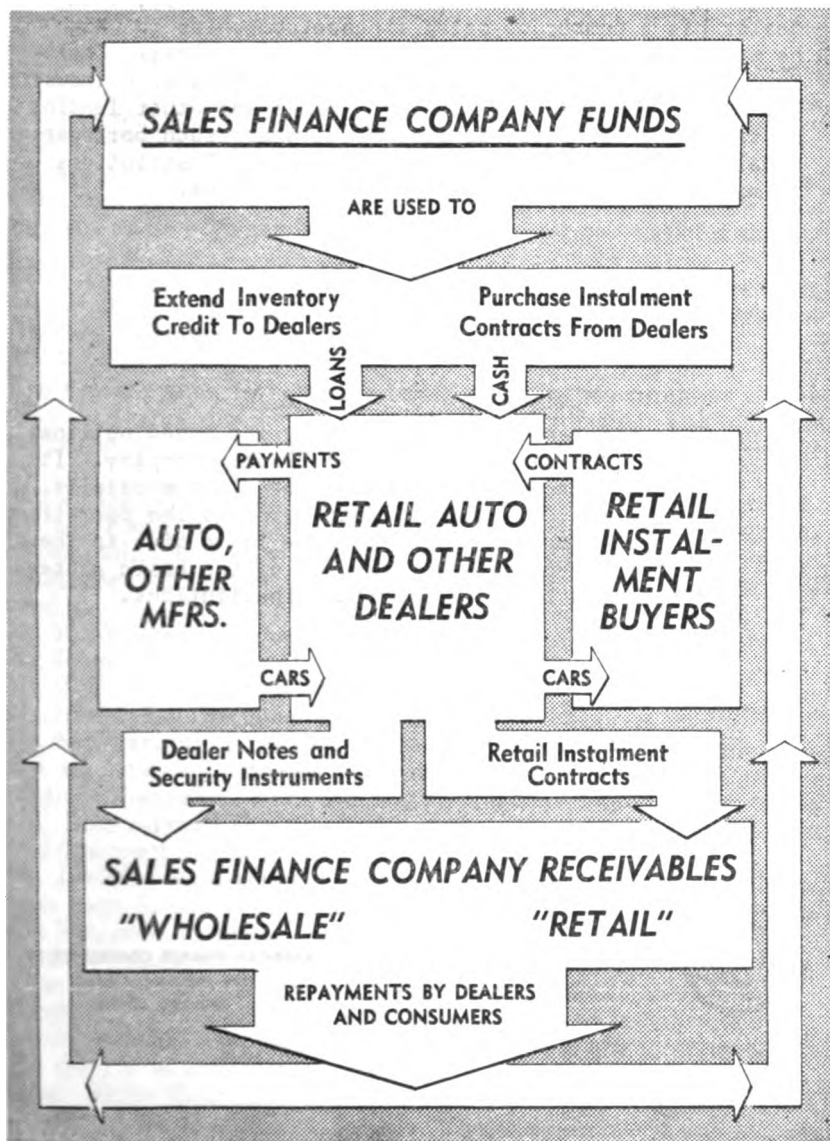
The dealer, not the finance company, fixes the "time-price", including the finance charge, which the time-buyer pays for the privilege of paying for the product in the future. Usually the finance charge is greater than the amount of the discount which the finance company gets. However, in a minority of cases, it may be the same. In very rare instances it may be less.

## III

Sales finance companies do not make loans to consumers for the purpose of purchasing the dealer's products. No relationship exists between the sales finance company and the time buyer until after the instalment sales contract is purchased from the dealer by the sales finance company. The Financial-Vice President of a large motor car manufacturer has described this customer-dealer-finance company relationship in these words:

"In a typical sales financing transaction a dealer negotiates with his customer an installment contract for the sale of an automobile. The contract includes a finance rate negotiated within a framework of such factors as competition, State regulation, and credit standing. A finance company then purchases this contract from the dealer at a discount rate."

# SALES FINANCE COMPANY CREDIT OPERATIONS



## IV

Sales finance companies secure their business through the active and persistent solicitation of retail dealers for the sale of their contracts. Outside solicitors of such finance companies call on dealers almost daily and are in frequent touch with them by 'phone; consequently, each dealer has a number of sales finance companies to which he may sell his contracts, at competitive prices. Therefore, competitive practices in the sales financing industry are unlike those that exist among banks and other lending institutions for borrower customers, where such borrowers usually go into the offices of the lending institutions to make their requests for loan accommodations.

# # #

Notes: This memorandum sets forth only the broad outlines of the operations of a sales finance company. It is not intended that it describe all the details, variations, or nuances, pertaining to the operations of such companies. Its purpose is to give to the reader a general understanding of the basic procedures used by these important institutions.



AMERICAN FINANCE CONFERENCE, INC.  
176 West Adams Street  
Chicago 3, Illinois

Mr. MEADER. It is in the statement.

The CHAIRMAN. All right, go ahead.

Mr. JONES. It is in my statement, the explanation.

Now, I would like to point out that in this pamphlet under III quoted there:

In a typical sales financing transaction a dealer negotiates with his customer an installment contract for the sale of an automobile.

That is what Mr. McCulloch and the counsel were saying a minute ago.

The contract includes a finance rate negotiated within a framework of such factors as competition, State regulation, and credit standing. A finance company then purchases this contract from the dealer at a discount rate.

These are the words of Mr. Yntema, the Ford representative, when he filed his statement 2 weeks later, correcting what he said were some statements made by other witnesses who were proponents of a similar bill.

So he agrees, also, that we do not make loans direct. Therefore, any charges made in a time sales contract are made by the dealer, not by the finance company.

Mr. MEADER. Mr. Chairman?

The dealer wants to sell that paper to a finance company, so he knows in advance that he is not going to sell that paper unless he negotiates the contract with the purchaser on such terms as he can sell it?

Mr. JONES. He knows the marketplace. He knows the marketplace, and I will say this: That dealers have a half dozen places that they can call, and if they do not get the best rate one place, they can call another. If they have got a high risk, they can shop that risk around.

Mr. McCULLOCH. Including banks?

Mr. JONES. That is true.

Mr. McCULLOCH. I read advertisements——

Mr. JONES. I notice you are quite interested in that.

Mr. McCULLOCH. I read advertisements of automobiles, which includes all types of automobiles from foreign to the highest priced domestic automobiles, and which advertise bank financing interest rates. I am advised that true interest rates in many instances do not exceed 6 percent, eight at most.

Mr. JONES. I have covered in my oral testimony here the explanation on page 8, where I talk about Mr. Yntema's statements, and I would like, also, to adjust this one thing which I touched on here:

That the relationship between a finance company and dealers is not like the relationship between merchants, normally, and a bank.

Merchants normally go in with even a good financial statement, and they say: "Please, Mr. Banker, will you loan me some money?"

The reverse is true in the sales finance business. It is very competitive. Sales finance companies in the sales finance business have solicitors out on the street calling on these dealers every day to buy papers, and they say:

"Please, Mr. Dealer, will you sell me a contract?"—just the opposite relationship.

Mr. McCULLOCH. Let me interrupt again. The representative of the sales finance company goes to Mr. X, the agent, and if he can offer

rates comparable or lower than Ford Motor Credit Co. or GMAC or any other automobile credit affiliate, will that representative not then get the business for his sales finance company?

Mr. JONES. There are a lot of other things besides rates, Mr. McCulloch.

The CHAIRMAN. That is the point.

Mr. JONES. I am going to touch on that.

The CHAIRMAN. Mr. Jones, forgive me for saying this. You approach this matter in sort of a negative way. I am not particularly interested at this point in what this witness said before the Senate committee.

I am interested in your thoughts. I would like you to make a positive approach on this thing and develop your position. The point is that there are other factors here.

Mr. JONES. That is right.

The CHAIRMAN. Otherwise, I never would have introduced the bill, and I would like you to develop that.

Mr. JONES. Thank you, Mr. Chairman.

Mr. CHAIRMAN. If you will read your statement and leave out the frills, we might get a constructive impression here. I am confused as to what this story really is.

Mr. JONES. Well, I am sorry.

Mr. HOLTZMAN. Mr. Chairman, may I ask one question.

Mr. JONES. Is not the heart of the problem, the fact that when you have the GM and GMAC affiliation, the GM dealer is eternally selling GMAC programs and is ruling out lots of competition?

Mr. JONES. Oh, certainly.

Mr. HOLTZMAN. Is that not the very heart of it?

Mr. JONES. Yes, and that is what Ford said when it went to the Supreme Court about GM and GMAC.

The CHAIRMAN. Go on with your statement, Mr. Jones, and I wish you would stick to your statement.

Mr. JONES. Now, the top of page 9.

Now, let's get at the truth about high finance charges. High finance charges do not exist because people own sales finance companies direct instead of owned by factories. High finance charges are not due to any difference that exists between the discount rate of a factory-owned finance company and those of a people-owned finance company. It is accounted for by the "pack" added by a dealer in his time contract entered into between the dealer and the time buyer. What is a "pack"?

The authority I use here for the "pack" is GMAC.

GMAC has defined a "pack" for us.

In 1938, GMAC very simply defined a "pack" in its brief before the Federal Trade Commission. GMAC defined any amount above its discount as a "pack," as explained in these words:

By reference to this chart he (the dealer) is able to determine the amount of the finance charge or differential he is to add to the basic price in making up the total time price of the contract he expects to sell. The chart amount and the differential contained in the total time price will correspond if the dealer conducts his instalment sales on the basis of adding only such differential into the time price to the buyer as equals the amount which the chart indicates GMAC, in paying the dealer for the contract, will deduct from the deferred balance payable under the instalment contract (the buyer having made a down

payment to the dealer or received a used car trade allowance). *In this case, the net result—*

this is our *italio*—

*the net result to the dealer is the same as though he had sold the car in a cash sale, since the down payment received and the amount of GMAC's payment for the contract equal the cash delivered price of the car.*

Briefly, that means if the dealer only adds the charge which GMAC is going to take as their income, then he will come out as if he sold the car for cash and had not sold it on time; and if he does that, there is no pack.

Now, it says further:

*On the other hand, if when he expects to sell the contract the dealer "packs" the finance charge or differential used in the computation of his time price by making it greater than the amount indicated in the chart, the net result, if the finance company buys the contract at the indicated discount under those circumstances is that the dealer will receive more than the cash price—if he adds more—because he will have charged the buyer a greater time price differential than the GMAC discount cost the dealer. [Italic ours.]*

Anything is a pack, according to this definition before the Federal Trade Commission, if a dealer in selling the car on time receives a greater amount from a finance company, and in this case GMAC, than if he sold the car for cash, and it did not involve a time transaction.

That is pretty clear.

The CHAIRMAN. Could you give an example in dollars and cents to illustrate that?

Mr. JONES. You mean illustrate a whole deal?

The CHAIRMAN. This pack.

Mr. JONES. Well, let us take an easy transaction. Let us take a \$3,000 automobile, and we will say we have a third down—that is, \$1,000—so you have an unpaid balance of \$2,000 that you are going to defer on a time basis. The \$1,000 might be made up with \$500 trade-in and \$500 cash, which is deducted.

You have a \$2,000 balance.

Now, there is a finance discount charge, and if you will look at No. 4 here, you will find that the—

The CHAIRMAN. I am asking you for your explanation.

Mr. HOLTZMAN. First, can you tell us how much the \$2,000 would cost the consumer in toto?

Mr. JONES. Yes, I will try to do that. You have a \$2,000 balance.

Mr. McCULLOCH. Over a 36-month time period?

Mr. JONES. Would you let me—I think, Mr. Chairman, if I could finish something, I think it would also help me, and I believe I could anticipate, if you would let me finish, and then ask the questions, I think I could get through.

The CHAIRMAN. All right.

You go ahead and read.

Mr. JONES. No, I want to give this \$2,000 illustration. With the \$2,000 unpaid balance on a \$3,000 car, if in doing business with GMAC they only added the charge that GMAC normally makes for financing a car or discounts the contract on a without-recourse basis, they would charge \$5.15 per \$100, \$5.15 per \$100 per year.

Now, if you have got a \$2,000 balance, you would have \$2,000 times \$5.15 would be \$103 a year, is that right? On your \$2,000 unpaid balance you would have \$309 for 3 years.

Mr. McCULLOCH. \$103 per year is it not?

Mr. JONES. If you had a \$2,000 unpaid balance and the rate was \$5.15, that would be \$309 for 3 years for the finance charge.

Now, if that was all that was added and the dealer sold the contract to the finance company, GMAC, then there would be no packing.

Mr. HOLTZMAN. In other words, the dealer could not make any profit on the financing of it?

Mr. JONES. That is right, according to this definition.

Mr. HOLTZMAN. And on a straight deal; is that correct?

Mr. JONES. That is right, and that is according to their definition.

Mr. HOLTZMAN. All right.

Now, give us the other side of the picture.

Mr. MEADER. How does he make more on a time sale than he does on a cash sale as you state in the second paragraph of your statement?

Mr. JONES. How could he make more?

General Motors furnishes them rate charts. GMAC furnishes them rate charts, and so do other finance companies furnish them rate charts that will figure out these installments that you asked me to figure out rapidly in my head, or the finance charges, and it will not be 5.15. It will be \$6, \$7, \$8, \$9 a hundred. GMAC furnishes such rate charts.

Mr. HOLTZMAN. Is that a common practice?

Mr. JONES. You bet it is a common practice. It is universal.

Mr. McCULLOCH. And what does it pay for?

Mr. JONES. That is the part that the automobile dealer keeps. That is what we call the pack. That is what GMAC just got through defining as a pack. So anything above 5.15 per hundred on a new car that the dealer charges is a pack.

Does that answer it?

Mr. MALETZ. Mr. Chairman?

One final question on this point, Mr. Jones.

What you are saying, as I understand it, is this: The purchaser is obligated to pay over a period of 3 years \$2,309; is that correct?

Mr. JONES. That is right, if there is no pack.

Mr. MALETZ. I am not talking about pack.

The purchaser is obligated to pay over 3 years \$2,309, is that correct?

Mr. JONES. Yes, \$2,309.

Mr. MALETZ. Now, this dealer, then, will he not, sell this installment contract, to a sales finance company?

Mr. JONES. That is right.

Mr. MALETZ. To GMAC or same other company, isn't that correct?

Mr. JONES. And get that \$2,000 unpaid balance.

Mr. MALETZ. Now, ordinarily isn't it true that the discount rate is lower than the rate that the dealer—

Mr. JONES. Charges the customer.

Mr. MALETZ. Charges to the purchaser?

Mr. JONES. Almost always.

Mr. MALETZ. If that is the case, the dealer then makes a profit representing the difference between the discount rate and the rate actually charged the purchaser, isn't that correct?

Mr. JONES. That is right, Mr. Maletz.

Mr. MALETZ. So, now, if this installment contract for \$2,300 is discounted with a sales finance company at the rate of 4 percent, then

the dealer then gets in cash from the sales finance company \$2,309 less \$92, is that correct?

Mr. JONES. No; not in the illustration I gave, but you see, if he sold the contract that I illustrated—

Mr. HOLTZMAN. Mr. Jones, in a straight deal as we just described with the \$5.15 interest rate, does a dealer ever make any profit on the financing?

Mr. JONES. No; not on that rate, that is right, that is the net charge of GMAC.

Mr. DONOHUE. And in order to have that paper set up at \$2,309 he would have to do business with the GMAC, is that correct?

Mr. JONES. Not necessarily. After he makes that transaction, he might sell that—I just gave you the GMAC rate, \$5.15. That is also my rate on new cars, you see.

Mr. DONOHUE. And in order for the dealer to make any money, he would have to sell it at a rate in excess of \$5.15 per hundred; is that correct?

Mr. JONES. No; he has to charge the customer more.

Mr. DONOHUE. That is what I mean, he charges the customer \$5.15 a hundred. He would have to charge him, say, \$7 a hundred.

Mr. JONES. That is right.

Mr. DONOHUE. And the difference between the \$5.15 and 7—

Mr. JONES. He gets to keep, that is right, but that is not the illustration I gave.

You asked me to give an illustration without a pack, and I gave you an illustration without a pack.

Mr. HOLTZMAN. As far as you know, are there many or any such straight deals involved in the purchase of a car?

Mr. JONES. You mean at a net rate that the charge is made by the finance company?

Mr. HOLTZMAN. Yes.

Mr. JONES. Once in awhile, but it isn't typical.

Mr. HOLTZMAN. Would you say this is a rare exception?

Mr. JONES. There is not 1 in 10,000.

Mr. HOLTZMAN. Not 1 in 10,000?

Mr. JONES. That is right.

Mr. HOLTZMAN. You don't even count it?

Mr. TOLL. There are ceilings on interest rates in many of the States of the Union.

Mr. JONES. In some States.

Mr. TOLL. Do you mean to imply that the ceilings on the interest rates are violated by the dealer?

Mr. JONES. You are talking about the usury rates?

Mr. TOLL. In Pennsylvania, we have a limit on charges. Do you mean to tell me in Pennsylvania that the dealer is able to acquire more interest for the car than permitted by the statutes?

Mr. JONES. Not over the ceiling rate, if you are talking about the finance law in Pennsylvania.

Mr. TOLL. Yes.

Mr. JONES. No.

Mr. TOLL. The ceiling rate applies to General Motors as well as to any independent?

Mr. JONES. That is right.

Mr. TOLL. So there is a limit on all of them in that State?



Mr. JONES. But, my friend, the ceiling rates are generally higher than this net rate, so there is always—

Mr. TOLL. In other words, they charge less than the ceiling?

Mr. JONES. The finance company charges less than the ceiling, that is right.

Mr. McCULLOCH. I want to ask you this question, since you are a banker: This is not an example which you have given us, which shows a balance of \$2,000 plus \$309, figured at the rate of 5.15 a hundred. This will result in a true interest rate of approximately how much?

Mr. JONES. It is almost double. It is 1.85 technically. You just double that dollar per hundred rate at simple interest, but 1.85 is the accurate amount, 1.85 times 5.15.

Mr. McCULLOCH. What would be the true interest rate?

Mr. JONES. The simple rate of interest?

Mr. McCULLOCH. Yes; would it be more than 15 percent or more than 10 percent?

Mr. JONES. No, no. You mean this 5.15?

Mr. McCULLOCH. Yes.

Mr. JONES. The 5.15 multiplied by 1.85.

Mr. McCULLOCH. It would be more than 10 percent, wouldn't it?

Mr. JONES. It would be 9.52 simple interest.

Mr. MALETZ. Mr. Chairman?

So that the record again could be clear, could we take a typical transaction. Mr. Yntema testified before the Senate Antitrust Subcommittee that on a \$2,000 car, forgetting all about trade names and downpayments, the time charges would be extended over a period of 36 months and that the time and insurance charges would be approximately \$500. Accept this assumption, will you not, so that the total price to the purchaser would be \$2,500.

Mr. JONES. On a \$2,000 balance, on that assumption?

MALETZ. Yes.

Mr. JONES. That includes insurance, \$2,500, OK.

Mr. MALETZ. Now, we will assume that the dealer is charging the maximum interest rate permitted by State law.

Do you follow me?

Mr. JONES. You mean the maximum charge under the installment act, time payment?

Mr. MALETZ. Now, typically, will the dealer then not sell that installment contract to a sales finance company, at, let's say, 4 percent or thereabouts?

Mr. JONES. Well, 4 percent normally is the lower rate; 5.15 is the lowest without recourse rate.

Mr. MALETZ. Let's call it 5 percent, if you will.

Mr. JONES. To make it easy, yes.

Mr. MALETZ. So on this \$2,500 sales contract, the dealer will get from the sales finance company in cash, will he not, \$2,500 less \$375?

Mr. JONES. That is right.

Mr. MALETZ. Which means that the dealer will get in cash \$2,125, is that correct?

Mr. JONES. That would be about right, yes. That would be about right. I haven't figured out your figures, but I believe that is about true.

Mr. MALETZ. Under your definition of pack then, the dealer would obtain——

Mr. MEADER. I think counsel has got those figures twisted around, because the bank that puts up \$2,000 is going to get this interest.

Mr. HOLTZMAN. Will you yield there?

Mr. MEADER. You have got the dealer getting \$300 and——

Mr. HOLTZMAN. Mr. Meader, will you yield?

The question presupposes the highest interest rate permitted by State authority, and in those instances the dealers do make a profit on the financing. There is no question about it.

The previous example reflected the minimum rate, and in those instances I don't see how the dealer can make a profit.

But, as testified to by the witness, not one minimum transaction in 10,000 takes place actually, so that the dealers usually charge pretty close to if not the ceiling rate, thereby permitting the dealer to make money on the financing in addition to the sale of the car.

Mr. MEADER. I don't quarrel with that. I was questioning whether the figures were right.

Mr. MALETZ. Mr. Jones, is this a typical kind of transaction?

Mr. JONES. That you just mentioned?

Mr. MALETZ. I beg your pardon?

Mr. JONES. That you just mentioned?

Mr. MALETZ. Yes.

Mr. JONES. The typical transaction is a transaction in which the dealer charges on a rate chart furnished by the finance company a rate higher than the finance company charges him. That is a typical transaction.

Mr. MALETZ. And the difference between the two represents a profit to the dealer?

Mr. JONES. That is right.

Mr. MALETZ. So in the example I have given isn't it a fact that the dealer makes a profit of \$125 on the finance charge?

Mr. JONES. Yes, sir, and that is why a finance company can't go directly to the public because the dealer doesn't want him to. He wants him to do business with him.

Mr. MALETZ. Now, if it is correct that GMAC charges lower finance rates than other sales finance companies, then there is every inducement, is there not, for a GM dealer to sell his paper to GMAC because he would make a greater profit?

Mr. JONES. Under that assumption.

Mr. MALETZ. On the finance charge?

Mr. JONES. The answer is "Yes," under that assumption if their rate is less, under that assumption they would certainly do that.

Mr. McCULLOCH. But that is one of the problems involved here. If a retail finance company can provide rates as low as GMAC, then the profit motive, or expressed another way, the greed for gold will take the dealer to the place where he can make most profit, is that right?

Mr. JONES. Yes, that is true.

Mr. McCULLOCH. Do you know whether or not General Motors requires its dealers to first offer their paper to GMAC, or may they offer it to a local bank? If they may offer it to a local bank, do they then often offer their paper to local banks?

Mr. JONES. I only know what is commonly said in testimony heretofore. The bankers say they have a hard time getting General

Motors business from General Motors dealers, naturally, that is easier to get it from other dealers. There are exceptions to that.

Certainly some dealers sell their paper to some banks, but the dealers know that they had best send a substantial amount of their business to GMAC.

Mr. HOLTZMAN. In addition to that, it is very convenient, isn't it?

Mr. JONES. Not any more convenient than with any other finance company.

Mr. HOLTZMAN. Wouldn't it be more convenient for the GM dealer now to trade with GMAC than it would be for him to sell his commercial paper elsewhere?

Mr. JONES. Sometimes it is not as convenient if you are just talking about a comfort convenience of easy to do business.

Mr. HOLTZMAN. Yes.

Mr. JONES. Because General Motors Acceptance Corp. generally in a State like Indiana where I compete, they have eight offices for the whole State. You will find that there are other finance companies, I forget, 700 or 800 licensees, and finance companies do business locally. That is one of their advantages.

Mr. HOLTZMAN. I am asking about the dealer now. In addition to it being more desirable, it is easier for him if he is a GM dealer to trade with GMAC, is it not?

Mr. JONES. No, sir, not any easier. He could do business with anyone. It is easier if he takes his overall operation into consideration. It will be easier for him to get along with General Motors if he does business with GMAC, if that is your statement, that is certainly true.

Mr. HOLTZMAN. That is exactly what I am saying.

Mr. JONES. Oh, yes, you are absolutely right.

Mr. McCULLOCH. Let me ask you this question: Does your bank, your commercial bank, or does your finance company, ever offer discounts that are greater than GMAC or Ford Motor Credit?

Mr. JONES. Do we ever offer a discount?

Mr. McCULLOCH. Yes, or do you ever offer rates or financing at a lower rate than GMAC?

Mr. JONES. Now, then, let's take their rate at \$5.15—

Mr. McCULLOCH. Or whatever the rate actually is.

Mr. JONES. It is \$5.15, without recourse. At \$5.15 you say do we ever offer less than \$5.15?

Mr. McCULLOCH. That is right.

Mr. JONES. We do sometimes, yes.

Mr. McCULLOCH. Do you get that business?

Mr. JONES. Not always.

Mr. McCULLOCH. Do you make a profit when you offer it at that figure or lower than that figure?

Mr. JONES. I question sometimes whether banks make the money in the consumer credit department.

Mr. McCULLOCH. Have you had much loss in your consumer credit?

Mr. JONES. Yes, we have.

Mr. McCULLOCH. With automobiles in the last year?

Mr. JONES. We have had some.

Mr. McCULLOCH. What percent of loss?

Mr. JONES. We are running up around better than 1 percent now.

Mr. McCULLOCH. That is a little higher than the average, isn't it?

Mr. JONES. Yes, it is running a little higher, it has been, Mr. McCulloch, recently you know.

The CHAIRMAN. Mr. Jones, would you say that the General Motors Co. encourages its dealers to pack?

Mr. JONES. Yes, sir, I certainly do. It is part of the merchandising scheme definitely. I'd like to go into that.

The CHAIRMAN. Isn't it true, if the dealers are packing, that the lower rate that General Motors Acceptance Corp. may charge does not benefit the consumer, but only benefits the dealer?

Mr. JONES. It only benefits the dealer, but not always the dealer necessarily on a lower rate.

The CHAIRMAN. In other words, the thrust of your testimony is, I think, that the lower rate is not passed on from the dealer to the consumer?

Mr. JONES. That is right, on account of the pack, on account of the pack.

Mr. McCULLOCH. Mr. Chairman, let me ask a question here.

Assuming all this to be true, do we need legislation of the type proposed, or do we need simple legislation which requires the seller and his agent to fully inform the buyer by a simple mathematical picture what the financial charges are and what is actually going on?

Mr. JONES. This is only part of it, Mr. McCulloch.

I would say that this is only part of it, but a very great factor. It is a very great factor.

The CHAIRMAN. We want to get those other parts, and we are going to ask you to read your testimony.

Otherwise, we will never finish. It is now almost a quarter of 12. You have been here since almost 10 o'clock, and you have only read 9 pages out of a statement embracing 22 pages. So I am going to ask you to read your statement.

Mr. TOLL. Mr. Chairman, may I inquire whether you don't want to find out what else is contained in the pack?

The CHAIRMAN. What else is in the pack, Mr. Toll asks.

Mr. JONES. What else?

Mr. TOLL. In addition to this finance charge, what else is included in the so-called pack?

Mr. JONES. This pack is simply the rate that is charged in excess of this \$5.15. It amounts to dollars.

Mr. TOLL. And nothing else?

Mr. MEADER. The gentleman from Pennsylvania is thinking about a package, but this means the dealer packs the finance charge.

Mr. JONES. Packing a charge.

Mr. TOLL. Is there anything else involved in this deal?

Mr. JONES. No; there are some other side incomes. I will come to that. There is also insurance income on this. It is all a part of the merchandising program. That is what this is.

Mr. MEADER. But the term, "Pack," does not refer to anything the dealer may make on insurance or any other side income. The pack refers only to excessive interest rate or finance charge; is that correct?

Mr. JONES. Yes, sir.

The CHAIRMAN. Page 10.

Mr. JONES. At the top of page 10, now we have defined a pack, and the size of GMAC reserve payments or packs.

How appreciable the excess of GMAC excessive charges or packs over losses has become was indicated by Charles G. Stradella, president of GMAC, at a Senate hearing in 1956.<sup>1</sup> He reported that GMAC paid its dealers \$5,901 in reserve per new car actually repossessed in 1952, and these amounts in others years: 1950, \$4,662; 1951, \$4,318; 1953, \$3,499; 1954, \$2,026; 1955, \$2,521. Explaining these figures, Stradella said that—

the average dealer would be able to take that much of a loss before he was in the red.

He observed further:

Since the average amount initially advanced on new-car contracts is currently only \$1,878, the figures in the table show that the dealer's participation in the finance charge has been considerably more than sufficient to absorb losses taken on the resale of new-car repossessions during the past 6 years.

If these charges were not high charges by a General Motors owned finance company, what were they? He could have explained also that the repossessed cars are returned to the dealer's place of business at GMAC's expense for the dealer to resell to reduce such losses.

And I might say, too, that if the car is not bought back, in other words, a skip, the dealer never pays anything. He takes no loss on that, only on the car that is brought back at GMAC's expense and on the floor of the dealer.

Based upon GMAC's own definition of the pack, not 1 deal in 1,000, probably not 1 in 10,000 deals, that GMAC has ever purchased or is now purchasing is without a pack that its time buyers must pay.

That is, the packs that GMAC charges.

Mr. HOLTZMAN. That covers the question I asked you a little while ago.

Mr. JONES. That is exactly right. That is typical.

Mr. MEADER. And your statement before was not confined to GMAC, but to time financing generally?

Mr. JONES. That is typical.

Present-day GMAC and Ford Motor Credit rate charts filed herewith provide for the very "pack" defined by GMAC. No matter how high a rate the dealer negotiates with the consumer—in struggling to make a net profit on the total transaction—the discount rate which the finance company charges the dealer remains constant.

A GMAC representative flatly admitted to an NRA official that the reserve (which GMAC introduced in 1925) came into the competitive picture before the bonus (which independents used as a counter-weapon).<sup>2</sup>

Mr. JONES. They called a bonus-without-recourse paper a reserve on a recourse basis.

Mr. McCULLOCH. Are both of those practices followed now by GMAC, Ford Motor Credit Co., banks, and independent finance companies?

Mr. JONES. That is right.

<sup>1</sup> Automobile Marketing Practices, hearings, subcommittee of the Committee on Interstate and Foreign Commerce, U.S. Senate (84th Cong., 2d sess., pt. 1, Government Printing Office, Washington, D.C.), p. 814.

<sup>2</sup> Minutes of meeting held in the office of Division Administrator Leighton H. Peebles; in room No. 3309, Department of Commerce Building, Washington, D.C., 10:30 a.m., Oct. 8, 1934.

A bank doing business with a dealer and buying his paper buys pack paper the same as any other finance company, if they do business that way.

The true nature of the reserve is explained by Russell Hardy, former special assistant to the Attorney General of the United States, writing in the *Indiana Law Journal* (spring 1955).

This gentleman happened to make a real study of the finance business because this was part of his job when GMAC and General Motors was prosecuted.

GM and GMAC gave the dealer participation the euphemistic label of "re-possession loss reserve," on the pretense it served solely to compensate the dealers for losses on defaulted finance notes.

In 1933 Alfred P. Sloan, Jr., then president of General Motors, candidly stated that any "appreciable excess over actual repossession losses was unfair to other finance companies."

**Mr. McCulloch.** But, again, Mr. Chairman, are not all companies engaging in this very practice?

**Mr. Jones.** And was then when Mr. Sloan made this statement; yes, sir.

**Mr. McCulloch.** Chrysler, Ford, XYZ bank, your bank, and all others?

**Mr. Jones.** Yes, I have answered that before, and I am not changing it. **Mr. McCulloch.** That is true, yes, sir.

Now, this is Mr. Sloan's statement:

That if there was any appreciable reserve above the losses, it would be unfair to other finance companies.

**Mr. McCulloch.** I wonder if the banks have considered that observation by Mr. Sloan, considered the advisability of acting upon that observation by Mr. Sloan?

**Mr. Jones.** I do not know.

Now, if you will read back to page 10, you will find that the present president of GMAC, Mr. Stradella, admits these \$5,900 payments plus repossession were certainly substantially above the actual losses, right? Now, relating Mr. Sloan's admonition to Mr. Stradella's admission we see what has happened.

The National Bureau of Economic Research study of 1940 observed also that—

in 1931-33, according to the samples collected by the Federal Trade Commission, the packs allowed—

this might answer, **Mr. McCulloch**, some of your questions—

the packs allowed by factory-preferred companies took, on the whole, a larger fraction of total charges than did those allowed by the other companies.

**Mr. Holtzman.** On that point, do you know of any banks that have anything in the nature of repossession reserve?

**Mr. Jones.** Oh, sure.

**Mr. Holtzman.** They do have that?

**Mr. Jones.** Sure.

**Mr. McCulloch.** Practically all, if not all, banks have that, do they not?

**Mr. Jones.** I could not say that. I just know of some. I have not looked at all of them.

**Mr. McCulloch.** You do not know of any who do not?

Mr. JONES. I do not know too many that do, either, because I have not gone and looked at any of their books. Now, this reserve that you are talking about is not in the possession of the dealer. It is in the possession of the finance company. GMAC holds those reserves for losses to be taken by the dealer.

Mr. HOLTZMAN. Does your bank have a repossession reserve?

Mr. JONES. Yes.

Mr. MALETZ. Mr. Chairman?

Mr. Jones, first, so far as the pack is concerned, does this not result from the fact that the dealer extends to the purchaser of the automobile credit at retail, whereas he, the dealer, buys credit, at wholesale?

Mr. JONES. I think that—

Mr. MALETZ. Is that not essentially the situation?

Mr. JONES. That is essentially the situation.

Mr. MALETZ. Now, beyond that, when banks buy installment contracts from dealers, do they usually buy on a recourse or nonrecourse basis?

Mr. JONES. That will vary. I think banks probably—I think banks probably—I have no statistics.

Mr. MALETZ. What about your bank?

Mr. JONES. We buy without recourse.

Mr. MALETZ. Without recourse?

Mr. JONES. In most of the cases.

Mr. MALETZ. So when you set up a repossession reserve, it is to protect your bank, is that not correct?

Mr. JONES. Yes.

Mr. HOLTZMAN. As distinguished from the dealer, is that correct?

Mr. JONES. Yes.

Mr. MALETZ. When GMAC buys the paper from the dealer—

Mr. JONES. They buy it with recourse.

Mr. MALETZ. It buys with recourse, does it not?

Mr. JONES. Yes, sir; and that is an important factor in this thing. This goes a little deeper than the surface.

Mr. MALETZ. So that the committee can understand your testimony, GMAC, as I understand you, charges in its discount rate an amount sufficient to cover possible losses resulting from necessary repossession, is that right?

Mr. JONES. There are two reserves that a finance company keeps, you see. They keep a reserve for losses taken by the finance company, but not recoverable from a dealer. This reserve will equal up to 2 per cent of their outstandings. This reserve has nothing to do with the dealer's loss reserve which is on the finance company's books to the credit of the dealer but under the finance company control.

Mr. MALETZ. I am talking about a dealer repossession loss reserve.

Mr. JONES. The dealer's repossession loss reserve is generally—if it is recourse paper—is kept by the finance company on their books and in their possession. And then after the contracts pay out, they pay it to the dealer. That is the way GMAC operates. They are recourse company.

Mr. MALETZ. In other words, the dealer gets an added source of income when he receives money from this repossession loss reserve, is that right?

Mr. JONES. Yes. Just exactly what Mr. Stradella covered. They got \$5,900 from GMAC in 1952 for each repossessed car.

Mr. HOLTZMAN. Does the dealer ever get such an additional rate when he trades with anyone other than GMAC?

Mr. JONES. Sure. It is competitive. They do business competitively. It is a very competitive business.

Mr. MALETZ. Do independent sales finance companies have a dealer repossession loss reserve?

Mr. JONES. Yes, sir.

Mr. MALETZ. A dealer?

Mr. JONES. Yes.

Mr. MALETZ. And that is only when the independent sales finance company buys on a recourse basis?

Mr. JONES. Not entirely; no, no.

Now, I will tell you—this business, you have to be patient if you are going to understand it, and I only have the hope of having you understand it. I am not here to misstate something.

But in the beginning they had recourse and nonrecourse. It was a plain business. We bought paper without recourse, and they bought paper with recourse, and with recourse the dealer would actually guarantee to pay the payments, if the other customer did not pay off the contract.

Then they came in with repurchase which was a dilution of the recourse method, meaning the dealer does not pay the balance unless the car is returned to him.

On a without-recourse basis you may buy paper from the dealer and take this reserve over and above the regular finance charge and, say, we put this up on reserve in the books and charge losses to it, although he sells it without recourse. So it is not always the case that the without-recourse paper does not have a dealer reserve in it that is paid later. I have to answer the question. It complicates it, but this is rather a technical business.

Mr. DONOHUE. Mr. Chairman?

Is it correct that in the sale of all GM products there is a charge against loss; that is, you pay for insurance against loss, do you not?

Mr. JONES. That is right.

Mr. DONOHUE. As part of the overall charges?

Mr. JONES. Yes, sir.

Mr. DONOHUE. So in what way would GMAC have a loss, having in mind that they have an insurance policy to guard against loss?

Mr. JONES. Insurance policy?

Mr. DONOHUE. Yes.

Mr. JONES. The insurance policy is only issued against collision losses and fire and theft.

Mr. DONOHUE. But I know it is so because I happened to examine a contract for the sale of a Buick just last week, and there was \$77 as a charge against loss, plus fire, theft, and collision.

Mr. JONES. I do not understand you. That might be the dealer reserve. You mean it was in the contract? It might be the dealer loss reserve, Yes.

Mr. DONOHUE. So in that way I could not see how the GMAC or the dealer could lose.

Mr. JONES. You could not see what?



Mr. DONOHUE. With an insurance policy guaranteeing against a default——

Mr. JONES. There is no such insurance policy. You mean for some insurance company?

Mr. DONOHUE. There was a charge in this contract.

Mr. JONES. I never heard of an insurance policy on sales finance credit.

Mr. McCULLOCH. It might perhaps cover insurance on the life of the mortgagor or the buyer.

Mr. DONOHUE. That probably could be.

Mr. McCULLOCH. But it should not be at that rate, in my opinion.

Mr. JONES. No. I do not understand just what he has reference to. There are insurance policies for credit life, insurance policies for collision insurance, and there are insurance policies for fire and theft. There are no insurance policies that I know of—and I am sure it is not typical—where they insure the credit.

Mr. DONOHUE. It might be on the life of the individual?

Mr. JONES. It might be.

Mr. DONOHUE. Where, if he died——

Mr. CRABTREE. Mr. Chairman, may I ask a question?

The CHAIRMAN. Certainly.

Mr. CRABTREE. Mr. Jones, as an alternative to the approach of this bill, have you considered outlawing the pack method of doing business, perhaps by amending the Federal Trade Commission Act to prohibit packs or to regulate the conditions under which packs can be used. Would that be a better solution to this problem?

Mr. JONES. The American Finance Conference on two occasions has made an attempt to eliminate packs. Packs started way back in the beginning of the business and it is a part of the factory merchandising plan.

We made two attempts. When the NRA law was passed, during NRA there was a code proposed, and the American Finance Conference was organized during that code period, and we came down to Washington and we filed a brief requesting no reserves and no bonuses.

Prior to our getting here, the other side, that is, the factory-owned finance companies, affiliated because they had three big manufacturers and three of the large finance companies. They proposed a code with a pack in it, or a reserve, under this GMAC definition.

We battled that thing for almost a year, and at the end of that time, we did get a code over the opposition of the factory-owned and factory-affiliated companies and some other companies that went along with us on the elimination of the pack.

We did get a code sent out from Washington, the last code that was ever presented by the Administrator, to our conference, and it prohibited both the reserves and bonuses. It also had a clause in there against subsidy, which is one of the things that has always been available to the factory owned or affiliated companies, always has been predominant in this business from the very beginning; factories have always subsidized their finance companies, and they subsidize GMAC today.

The code included an antisubsidy clause in it, and it included an anticoercion clause.

Now, the chicken coop case, I think it was called, found the NRA unconstitutional. Elimination of the pack was one of the efforts of our association. On account of the excessive charges and packs that went on. In answer to your question, Mr. Crabtree, we again made a similar effort with General Motors Acceptance Corp. The effort was in about 1957.

Our whole board of directors voted authority to a committee to get one of the leading finance companies affiliated with a factory, which was GMAC, to cooperate in such program, that is, to promote the passage of State legislation eliminating the pack.

We negotiated and that was turned down by GMAC. Does that answer your question?

Mr. CRABTREE. Now, just one other question. Are you familiar with the law that Congress passed which regulates automobile financing in the District of Columbia?

Mr. JONES. I have heard about that law.

Mr. CRABTREE. Does that law have any provision with respect to packs, do you know?

Mr. JONES. Most of the laws in the States legalize the pack. They do not eliminate it, most of the laws. There have been two series of laws that would be divided in two periods. Back in about 1955, there was an adverse court decision to the time-price theory which gave legal validity to time sales charges.

Prior to that, most laws, and you can examine this, most laws on regulation of finance business were passed by reform Governors or legislatures over opposition of factory owned and affiliated finance companies these laws limited dealer participation so that it was a reasonable amount and thereby eliminated the pack.

That was true in Indiana and Ohio, Michigan and Wisconsin.

Since 1955, finance companies have been the proponents of legislation to legalize their business, the legality otherwise threatened because of the adverse court decision. The big companies and GMAC are the ones that have done this, and the laws provided rates at \$7, \$8, \$9 per \$100, which all provide for a pack on a substantial part of the business.

Mr. CRABTREE. Actually, this method of selling on a time price rather than specifying the interest is a way of getting around the usury laws; is that not correct?

Mr. JONES. I think, fortunately, the usury laws did not apply. In the old days, you know, when the business started, fortunately for the automobile business, they followed the time-price theory, which goes way back in some court decision that I do not remember now, but there was a court decision that you could sell a product at cash and then you could sell it on time.

Time sales based on the time-price theory caused this business to grow. It was not slowed down waiting on State legislation. The dealers sold the car for cash or he said:

"All right, I will sell it to you for \$500 more than that," and that is the time price, and then the finance company discounted the time contract.

Mr. CRABTREE. You can sell the car for a certain price, plus interest, under the usury law; but if you sell the car for a cash price and sell it for a greater price on a time basis, you are not bound by the usury laws; is that correct?

Mr. JONES. That is correct.

Mr. CRABTREE. Is that practice included in the pack?

Mr. JONES. The pack may be included in the time price and the pack is also included in recent State laws. There is room for packs in State laws.

Mr. CRABTREE. So a lot of the trouble really lies at the State level, is that not correct, in that laws have not been passed which would outlaw these packs?

Mr. JONES. A lot of the trouble that is in that area is just exactly what I told you. You cannot get a law through a State if the factories do not want you to, because just as soon as you start to passing a law that would eliminate this pack, the factories come out and they have come out through their finance companies and stirred up the dealers and say, "Look what you are losing."

And there are a lot of dealers and, mind you, so we cannot do it either. You see what you can do about it. You have got a good law in Ohio and it was done by a reform legislature.

Mr. CRABTREE. I would suggest, although I have not looked into this, there might be some possibility of amending the Federal Trade Commission Act to define this as an unfair trade practice.

Mr. JONES. It might be. Of course, I would like to talk on this bill because it goes deeper than just these packs.

Mr. CRABTREE. Thank you.

Mr. MEADER. I would like to ask; what does this pack business have to do with H.R. 71?

Mr. JONES. It has a lot to do with it, if I can get around to it.

The CHAIRMAN. Go ahead. That is a very pertinent question, and we will appreciate it if you will in a very simple way tell us succinctly and, cogently, what the pack has actually to do with the bill before us.

Without referring to your documents, tell us in your own language just briefly what other factors are involved, of an antitrust nature, for example.

Mr. JONES. All right.

The CHAIRMAN. As simple as you can make it, now.

Mr. JONES. I will try.

Many years ago General Motors created side incomes for their dealers through the use of their subsidiaries. In 1919, they organized GMAC, and shortly afterwards, they organized their insurance subsidiary.

They originated the pack in 1929, or the reserve. That was a side income to the dealers.

The insurance commissions from the insurance subsidiary became an additional side income to the dealers. They took the packs and the insurance income with the result that GMAC created five incomes, all under the control—the five incomes consisted of (1) mark up on cars and parts, (2) insurance commission, (3) normal finance reserve, (4) overcharge or "pack," and (5) insurance repairs and replacement. The last three are delayed incomes which hold dealers for GM.

The CHAIRMAN. Leave that paper aside. I want you to—

Mr. JONES. All under the control of one corporation, General Motors.

Now, these side incomes enabled the dealers of General Motors to sell their cars at a discount below their cost of sales at a greater amount than was the dealers of other manufacturers.

The traditional selling method of the automobile industry is to load your dealers with inventory, and then the dealers have to sell their cars for any price they can get out of them.

This last year in 1960 they made one-half percent in their total operation, including the 1 percent that finance men estimate they get from reserves alone, not included in the insurance and these other incomes.

So GMAC, with these two corporations, without the substantial acquisition costs normal insurance companies and finance companies, the insurance company and their finance company are able to give their dealers a greater side income than can the dealers of the other manufacturers as a result GM dealers are able to sell their cars at a cost below cost of sales, with disastrous result in this industry. That is why we have had the deterioration of dealers, the dealer body of Studebaker, Chrysler, and even Ford Motor, and the switches of franchise to General Motors.

And because of this tie-in, these delayed incomes that General Motors hold on their books the insurance income, the finance pack and reserve, the repairs on the cars that they have insured, all of which is endangered if they leave the General Motors franchise and go over to another franchise.

So this whole pack and these side incomes have a great deal to do with the present condition, which is an unhealthy condition in the automobile business.

The CHAIRMAN. Pardon the interruption—would you say that General Motors now controls about 50 percent of automobile production?

Mr. JONES. A little better than 50 percent right now.

The CHAIRMAN. And what you are testifying to now, is that by this so-called pack and with its connection with General Motors Acceptance Corp., more and more business will gravitate to General Motors, so that foreseeably General Motors will get even a greater stranglehold on the general public as far as the manufacture and sale of cars is concerned?

Is that the thrust of your testimony?

Mr. JONES. That is exactly what will happen, and you will find further deterioration in the economic condition of other automobile manufacturers, which is already bad enough.

They have taken these side incomes and enabled their dealers to sell their cars at less than cost of sales beyond anything that can be matched by the other manufacturer's dealers who have to depend upon independent financial institutions and insurance companies who have overhead of acquisition costs.

In addition to that, you want to know the antitrust angle of this, in addition to that we will show you that General Motors, by subsidy, has packed into the price of their products for one subsidy alone, capital subsidy, one subsidy alone in the price of all their products that they sell, cars, ranges, diesel engines, ball bearings, all the products, \$1 a hundred, which subsidy is given to the benefit of GMAC to furnish these side incomes and to subsidize their wholesale rates that they extend to their dealers.

The Ford Motor Co. complained about the fact that they made a survey of wholesale rates, the subsidy of wholesale rates that they made a survey of 80 dealers and they had to pay a rate of interest they

claimed was one-half of 1 percent more than the rates charged by GMAC to General Motors dealers and they said this was pretty bad. But it was at a time when the prime rate in the United States including the costs of compensating balances was at least 5 percent. Ford Motor Co. itself couldn't have borrowed money at that time from banks for less than 5 percent. But of the 80 dealers about whose wholesale cost Ford was complaining 74 were borrowing money at or below the effective rate from us independents.

Now, this is subsidy.

That is where this subsidy goes, and why it is rough and why Studebaker is having a hard time getting along and these other manufacturers.

Some of these companies were automobile dealers, about four small businessmen by comparison were receiving a rate of 4 percent. Around 60 of them were receiving a rate of 4½ percent, and only about 5 to 10 of them were receiving a rate that was at 5½ to 6 percent.

Now, this was a lower rate than 90 percent of your sales finance companies could borrow at or even Ford Motor Co. or General Motors itself could go into the market and secure at prime rates.

That is subsidy.

That is what we are talking about: This pack, the side incomes of insurance income, insurance repairs, all under the control of General Motors, holds the General Motors dealers and binds them to them.

You have a frozen situation in the automobile dealers today. There is a logjam. There is no mobility among dealers between manufacturers, because the General Motors dealers would be silly if they switched to a non-GM franchise considering the reduction in these side incomes, and General Motors is generally not wanting to take any more franchised dealers from Studebaker and other non-GM dealers because, like any monopolies, their executives have to be as adept at turning things off as they are turning them on, and they are not taking dealers from the others.

So there is not any mobility on the part of the dealer body going back and forth from one manufacturer to another.

General Motors has got a monopoly of the best dealers in this business.

Now, mind you, the only people that automobile manufacturers sell to are automobile dealers, and there is no mobility in that market today and there will not be unless a change is made.

Now, if GMAC is separated from General Motors and the people own GMAC, then it is not as important as it is that the resources of that big company would be available to finance these other dealers, non-GM dealers. That is not the most important.

The most important thing is that it breaks this log jam. Because of future repairs and replacements the dealers who now have these insurance arrangements and have these reserves on General Motors' books, that have these big profits in them, these delayed incomes, they could move and become another franchised dealer, which they would be afraid to do today because of fear of the loss of the reserves, insurance, the repair business, loss of their financial institution.

In other words, they could move with their finance company, GMAC, over to the other franchised dealer. A representative of Chrysler Corp. could call on a town in which there is dual dealer-

ship of Chevrolet, two Chevrolet dealers, and they could say to one of these dealers:

"Listen, if you move over and take on the Chrysler-Plymouth franchise, we will give you an exclusive franchise for this whole area."

With GMAC independent, that dealer would likely, in the case—that is, that GMAC would move with him—would likely switch franchises. The dealer would not switch franchises today. They could not move, because these delayed incomes would not move with him. That is the important thing about that.

And, gentlemen, if it was not for the importance of the standpoint of a free marketplace, I wouldn't be here.

We are talking about a GM monopoly and restraint in the market for dealers.

This is not a fight between finance companies. I am not interested in making my business easier for me, because certainly it won't be easier for me. That just stands to reason.

If this big GMAC, with all these qualities people say that it has, comes over out of this one GM area that they are now voluntarily confined, just financing General Motors cars, and comes over and competes with me for Chrysler business and Ford business and Studebaker business and the rest, how does that help me?

It won't help me, but it will help the American public, because after they move GMAC over and make it an independent company, you will find that the dealers of these other manufacturers will become healthy. They will have the benefits of a free marketplace, and as the dealers become healthy, as the dealers of the other manufacturers become healthy, then because they are the lifeblood of their factories, that is the only way that the factories are going to be healthy.

The manufacturers are having trouble in this country, because the manufacturers like Chrysler don't have a good strong dealer body. There are big cities in these United States that have no Chrysler dealers, no Plymouth dealers, and they won't get them, because of this condition that we are talking about.

Now, do I answer this question?

The CHAIRMAN. Does that answer Mr. Meader's question?

Mr. MEADER. It was a long answer. I am not sure it is complete.

The CHAIRMAN. I am going to ask you, Mr. Jones, to put the balance of your statement in the record. The bells have rung for a quorum call. I will give you permission now, if you wish, to continue for a short while until the second bell rings to give us any additional oral testimony you would care to.

We have other witnesses.

Mr. JONES. You have other witnesses.

The CHAIRMAN. We have witnesses who have come from distant places.

Mr. JONES. I have attempted, I think, to sum up this story that I think is very serious about these side incomes. It goes to the core of this, packs are part of it.

Mr. MEADER. If he is not to return, may I ask one or two questions about his company?

The CHAIRMAN. I didn't hear what you said, Mr. Jones.

Mr. JONES. I said these side incomes that General Motors has developed are at the very core of this monopoly, and you are going to have a monopoly in this automobile business until you "bust" it up.

The only way you can have free marketplace in the automobile industry is to take GMAC and make it an independent finance company.

The CHAIRMAN. Here is what I am going to ask you to do, Mr. Jones. I am going to ask you to restudy the balance of your statement, to come back at 2:30 and then to give us an epitome of that statement.

Will you please do that?

Mr. JONES. Of the statement I just made?

The CHAIRMAN. No, the balance of your statement.

Mr. JONES. Yes.

The CHAIRMAN. I will have to limit you, then, because we must hear from a number of gentlemen who have come from a distance, and it would be unfair to hold them until tomorrow.

Mr. JONES. I thank you very much, Mr. Chairman, for this opportunity.

The CHAIRMAN. So epitomize your statement when you come back at 2:30.

We will now adjourn until 2:30.

(Whereupon, at 12:15 p.m., the committee recessed, to reconvene at 2:30 p.m., the same day.)

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Jones, we will be glad to hear the balance of your testimony.

Do I understand that you want to place your statement in the record?

#### STATEMENT OF PAUL JONES (RESUMED); ACCOMPANIED BY DAVID B. CASSAT

Mr. JONES. I would like, Mr. Chairman, to place the statement in the record, and in the interests of time, because there are others that have come a long way to testify, that they follow me now, and that if there is any question that anyone would want to ask, and it is not cleared up by subsequent testimony, I would be glad to be available any of the days to answer those questions.

Thank you, Mr. Chairman.

The CHAIRMAN. If you wish, you can epitomize the balance of your statement.

Mr. JONES. I prefer to let the others go on, sir.

The CHAIRMAN. All right.

Mr. MEADER. Mr. Chairman, I have some questions.

Mr. JONES. Unless anyone wants to ask me some questions now, I am available at your pleasure.

Mr. MEADER. Mr. Jones, I would like to ask one or two questions about your organization.

What is your position with the American Finance Conference?

Mr. JONES. I am chairman of the executive committee.

Mr. MEADER. Chairman of the executive committee?

Mr. JONES. Yes, sir.

Mr. MEADER. And what is the membership of your organization?

Mr. JONES. There are 244 finance companies that are members of our association, spread throughout the country.

Mr. MEADER. Does that comprise all of the independents, the so-called independents?

Mr. JONES. No.

Mr. MEADER. How many independents are there in the business that are not members of your organization?

Mr. JONES. Outside of CIT and Commercial Credit Co., the two large ones, I would say that we have in our membership 95 percent of the volume done by independent sales finance companies.

Commercial Credit and CIT are not members of our association.

Mr. MEADER. And the number of companies—how many are—you said you have 244?

Mr. JONES. We have 244 and that is chiefly the companies that specialize in the sales finance business. There are a lot of companies that, incidentally, buy a deal once in a while.

Mr. MEADER. Would you have any idea how many are in the business but are not members of your association?

Mr. JONES. No. People that buy business in the sale finance business would run into, I expect, a thousand companies. That would include loan companies that maybe buy one deal a month or occasionally buy a used-car deal.

Mr. MEADER. How many are sales finance companies of the same character as your members but who are not members of your association?

Mr. JONES. Not many. Maybe 25. That would be a guess of companies who specialize in the sales finance business. They are mostly members of ours, excepting the companies that I mentioned that are of any substantial size. CIT and Commercial Credit are not members.

Mr. MEADER. No banks are members?

Mr. JONES. There are banks who are associate members and I did not include associate members. There are about 60 associate members and that includes some banks.

Mr. MEADER. It includes some banks?

Mr. JONES. Yes; but for the reason that they lend to us rather than because they are members doing sales finance business. They have been members for many years.

Mr. MEADER. What is the purpose of your American Finance Conference?

Mr. JONES. Its purpose is the same as any other trade association, I suppose. We have our annual meetings and we conduct the affairs of interest in the field of sales finance.

Mr. MEADER. And one of the objectives of your conference, financial conference, would be the passage of legislation similar to H.R. 71?

Mr. JONES. One of our objectives would be to promote any legislation that would make a free marketplace in the sales finance business and in the automobile manufacturing business; yes.

Mr. MEADER. Both in the States and in the Federal Government?

Mr. JONES. There is no State legislation of that kind that we know of, nor any possibility of this nature.

Mr. MEADER. Your conference does not concern itself with the passage of legislation for the advantage of your members in the State legislatures?

Mr. JONES. Oh, yes; we have a legislative committee that takes care of the State legislation, but I thought you had particular attention to this kind of legislation.



Mr. MEADER. You are interested, are you not, as a conference, in the passage of H.R. 71 and similar legislation?

Mr. JONES. Yes, sir.

Mr. MEADER. For the advantage of your membership?

Mr. JONES. Yes, sir; we are interested in legislation.

Mr. MEADER. That is all I have.

The CHAIRMAN. Mr. Jones, on pages 16 and 17 of your statement, you say:

GM created a sales finance subsidiary in 1919. By coercing GM dealers in those early days (proof: GM was indicted and convicted in the U.S. district court because of these activities and the Supreme Court upheld the conviction), GM became entrenched with its dealers and eliminated the substantial acquisition costs entailed in independent sales financing.

Just as briefly as possible, will you amplify on that?

Mr. JONES. General Motors in 1919 created their sales finance company. At the beginning, they didn't get much business, Mr. Chairman, and it was not until 1925 that they began to get a great deal of growth, and that was when they introduced dealer participation or packing of charges, and then their growth became tremendous.

They did coerce their dealers, force their dealers to do business with GMAC, and those tactics included refusing to ship cars that dealers needed who had them already sold to customers, making it difficult to obtain credit accommodations from their local sales finance companies.

Their roadmen would go to the dealer's place of business and threaten to cancel their contracts. As an illustration, if you would like an illustration, if it is not going too long, we had a local dealer in Marion, Ind., in my hometown, in which this dealer, because we bought paper without recourse and GMAC required recourse business, wanted to do business with us. Because he wanted to do business with us, they required him to pay for his cars ahead of time. So we would advance the money, and as you attorneys know, that when you advance your money before you get the security, in case of bankruptcy you would not be secured, so we were placed at considerable risk.

Well, nevertheless we did it.

Then when his contract came up for renewal they had him sign it but they refused to deliver his contract, and began to quit shipping him cars. He had a lot of cars sold, and this gentleman wrote to Alfred P. Sloan, and Mr. Bill Holler, sales manager, asking for relief. The dealer filed these letters in the trial of GM in the Federal Court where he was a witness. I have filed copies of those letters in the Senate hearings as documented evidence. As a result of those letters, the following week, he received a reply from Bill Holler and Sloan, in which they said, "You will hear from the distributor at Indianapolis," and the distributor at Indianapolis wrote him a letter stating:

You tell us what kind of cars you want. Then we will manufacture them. You tell us the color, upholstery, and so forth and we will manufacture them, but you pay for them when you order them.

Six weeks later he would get those cars, and we had to put up the money. So we are financing not only the dealer, but GM, and the dealers was paying the cost. In the meantime—during the six weeks—we were unsecured. They were coercing us as well as the dealer.

Mr. McCulloch. How long ago was that?

Mr. Jones. That was this coercion that he is asking me about.

That was in 1935.

But that is when they became entrenched. That is when they built the house.

Now, you don't keep building houses after you have got them built, you know.

You might have a carpenter come along and tack on a nail once in awhile, but they don't do that any more, they don't have to, but they had to then to get the business away from me, and they got the business away from me finally because that dealer had to give them his sales finance business, and I have never had it since.

Mr. McCulloch. Mr. Chairman, I would like to ask a question at this point. Do you know whether or not GMAC and GM or Ford and Ford Motor Credit Co. are presently engaged in practices which resulted in the indictment of General Motors at the time it was indicted and subsequently convicted?

Mr. Jones. Mr. McCulloch, I don't believe, generally speaking, that they do. There is a very rare occasion that they do that any more because they are entrenched.

Mr. McCulloch. I presume in view of your statement you have not complained to the Department of Justice about any of the activities of General Motors or Ford and their respective credit affiliates.

Mr. Jones. We have complained because there are other types of coercion, but he was asking about the early coercion.

Mr. McCulloch. Have you complained within the last year?

Mr. Jones. Yes, sir. There has never been an administration in which there was a new Assistant Attorney General appointed at the head of the Department of Justice that we haven't tried to get relief through the Department of Justice, but because of the *res adjudicata* situation they said, "There is nothing we can do about this situation."

Mr. McCulloch. Have you complained to the Federal Trade Commission about these practices?

Mr. Jones. Yes, sir; we have talked to the Federal Trade Commission, not like we have the Department of Justice.

Mr. McCulloch. And you have had no relief from either the Department of Justice or the Federal Trade Commission?

Mr. Jones. We have had no relief.

Mr. McCulloch. Are those complaints documented by written communications?

Mr. Jones. Which complaints are you talking about?

Mr. McCulloch. That you have made to the Department of Justice and or to the Federal Trade Commission.

Mr. Jones. You mean the interviews we have had with them? Yes.

Mr. McCulloch. I mean any complaints or interviews.

Mr. Jones. Yes; we have even had attorneys to write briefs in which we hope to convince them that this was not *res adjudicata*; yes.

Mr. McCulloch. And do you have replies from the Department of Justice and or the Federal Trade Commission?

Mr. Jones. Yes, sir; we do.

Mr. McCulloch. Are you in a position to furnish those communications for the record?

Mr. JONES. Yes, sir.

Mr. McCULLOCH. For the committee?

Mr. JONES. We could furnish a letter from one of the assistant attorneys general in which he referred to our interview and he felt that there couldn't be anything done about it.

We can also furnish briefs that were prepared by our attorneys in the hopes that we could get them to open up the consent decree.

Mr. McCULLOCH. Mr. Chairman, I think the record might be encumbered by briefs, but I think it would serve a useful purpose—

Mr. JONES. These briefs are not lengthy.

Mr. McCULLOCH (continuing). If the communications addressed to the Department of Justice and the Federal Trade Commission and the answers thereto were made a part of the record.

The CHAIRMAN. They may be confidential communications. They should be available to the members of the committee and the staff, and then if they see fit they could publish it.

Mr. McCULLOCH. I will accept it subject to that.

(The information referred to appears at pp. 226 and 315.)

The CHAIRMAN. You may give them to the staff.

Mr. MEADER. Mr. Jones, I am not sure that you were talking about the same thing that Congressman McCulloch was asking you about. Let me ask the question in a little different form.

Have you or any of your companies or anyone else, to your knowledge, submitted to the Department of Justice evidence of violation of the consent decree on the part of General Motors and GMAC?

Mr. JONES. Let me confer here with a fellow who has done a lot of contacts with the Department of Justice.

Mr. CASSAT. We should furnish the Department of Justice their evidence? That is what they are for. They get evidence.

Mr. JONES. Did you get the answer?

Mr. MEADER. I will ask you first, Mr. Jones, if you personally or any one of your associates, to your knowledge, has submitted to the Department of Justice evidence that General Motors or GMAC have violated their consent decrees.

Mr. JONES. Yes, we have.

Mr. CASSAT. I think that is a long way from this hearing. We are talking about legislation here. But we have submitted evidence to the Department of Justice from time to time, yes; the answer is "Yes."

Mr. MEADER. Who are you?

Mr. CASSAT. I am Mr. David B. Cassat.

Mr. MEADER. What is your position?

Mr. CASSAT. I am on this committee of the American Finance Conference.

I was president when this action was started in 1936, and if I live long enough I hope some of you fellows will do something about this. I want to see it before I die.

So I am still down here plugging for it.

Mr. MEADER. I would like to ask that there be submitted for the committee's files or for the record if it is appropriate in the committee's judgment the instance of—

Mr. CASSAT. Do you think that would be proper, sir?

Mr. MEADER (continuing). Violation of the consent decrees which you have called to the attention of the Justice Department.

Mr. CASSAT. Do you think it would be proper for me to bring to a committee hearing what I have given to the Department of Justice on a matter that hasn't yet been adjudicated?

Mr. ROGERS. I think that what the gentleman is getting at is that there was a consent decree entered in 1952 which, it is claimed, is meeting the problem.

Now, one of the issues in this proposed legislation, is whether or not this consent decree has met the problem, and I understand that you and some others claim that it has not. Now, let's see what has been submitted to the Justice Department, and find out why they haven't met the problem or why they should meet it.

Is there any objection to making that available to the committee?

Mr. CASSAT. I would not care to submit to this committee voluntarily any evidence that I have given the Department of Justice in an effort to get them to take further action.

Mr. JONES. You mean on individual deals?

Mr. CASSAT. I think it would be entirely improper, sir.

Mr. ROGERS. Why would it be improper? I would just like to know why you think it would be improper.

Mr. CASSAT. Well, I just don't think you disclose your evidence until a proper time in court. Do you? Now, you gentlemen are all attorneys.

I don't know.

Mr. JONES. May I answer this?

Mr. ROGERS. Yes.

Mr. JONES. Tomorrow, as I understand it, you are going to have testimony here from the head of the Department of Justice, Mr. Loevinger, and you are going to have the head of the Federal Trade Commission.

Wouldn't it be proper to ask them what they have in their file? They would be the proper people to take the information that they have and disclose it to this committee.

Mr. ROGERS. That is true.

Mr. JONES. You could certainly ask them the questions.

Mr. ROGERS. At the same time, they may not have all of it there.

Mr. JONES. They would have what we filed.

Mr. ROGERS. I sat on the committee for 2 years investigating the Department of Justice in 1952 and again in 1953. You can't go down and get everything they have. All we are trying to do here is determine what is proper legislation.

Now, one of the matters that has been brought out, on one which we hear argument, is that improper activities have been enjoined by this consent decree in 1952. Therefore, we want to know if the decree is adequate, and if it isn't adequate you should point out why it isn't adequate; whether you found evidence that there is a violation of the decree; whether they are getting around it; and things of that nature. That is the only purpose we have in wanting this information.

Mr. JONES. Mr. Chairman?

Mr. ROGERS. Yes.

Mr. JONES. There hasn't been a single statement made by me, and I think I am about the only one that has testified up to now; there hasn't been a single statement made that GMAC has violated the consent decree. We have not made that claim.

Mr. ROGERS. But your associate just made that statement. We were confronted with a situation where Mr. Meader asked what you have done about informing the Justice Department as to violation of the decree. And as I understand, you didn't want to tell us what you had given to Justice, isn't that so?

Mr. JONES. That was his statement.

Mr. ROGERS. Let's get him properly identified.

What is your name?

Mr. CASSAT. My name is David Cassat.

Mr. ROGERS. And what is your address?

Mr. CASSAT. I am president of the Interstate Finance Corp. of Dubuque, Iowa.

Mr. BROMWELL. My name is Bromwell. I am a member of this committee.

Mr. Chairman, I would like to introduce to this committee Mr. Cassat, whose remarks appear earlier in the record, but who has not testified as yet. Mr. Cassat is one of the most distinguished citizens of the Second District of Iowa. He is the president and founder of the Interstate Finance Co. of Dubuque, Iowa. He founded this company some 37 years ago and, at the present time this company is the largest independent finance company in the State of Iowa.

He was the president of the American Finance Conference in 1936 and 1937. He is a director of a bank and other unrelated corporations, and is excellently qualified to testify concerning this subject matter.

I should also like to mention to the committee some of the other activities that Mr. Cassat has carried on collateral with this, simply as a means of identification of Mr. Cassat.

He is a former president of the National Council of Presbyterian Men. He is a director and officer of Presbyterian Life; he is chairman of the Iowa State Study Committee on Higher Education, and at the present time is a vice president and treasurer of the National Council of Churches. I welcome this opportunity to introduce Mr. Cassat to the committee.

Mr. CASSAT. Thank you, Jim.

Mr. Rogers, will you repeat the question so that I may answer it succinctly?

Mr. ROGERS. The question is this. As I understand it, in response to a question from Mr. Meader, you have stated that from time to time you made complaints to the Justice Department and the Federal Trade Commission as to the activities of GMAC and others under this consent decree.

Now, you were asked whether you would be willing to let us have copies of those complaints?

Mr. CASSAT. My answer to that would be "No," I would not like to do so.

Mr. ROGERS. Then my question is: What are these reasons?

Mr. CASSAT. Yes, indeed. I gave them to the Department where I think they belong. That is in regard to legal matters. Here we are talking about legislation.

Mr. ROGERS. What is the difference between legal matters and legislation in your analysis of the situation?

Mr. CASSAT. My refusal is based on the idea that evidence of violation of this consent decree is a legal matter and is up to the De-

partment of Justice entirely to administer. And I do not think it would be appropriate—you gentlemen are lawyers and I am not—I do not think it would be appropriate for me to divulge them in a committee hearing; also, I do not have them with me. We have employed expensive lawyers to take briefs to the Department of Justice as to how they could reopen this thing.

There is a big difference of opinion as to whether the consent decree makes this matter *res adjudicata* or whether it can still be opened.

The CHAIRMAN. It resolves itself to this:

Questions were asked as to whether or not you complained to the Department of Justice. You say you have complained. Incidentally, what is the date of that complaint?

Mr. CASSAT. Say that again?

The CHAIRMAN. What is the date your complaint was filed with the Department of Justice?

Mr. CASSAT. What date?

The CHAIRMAN. Approximately.

Mr. CASSAT. Well, one of our determined efforts was made when Judge Hansen was Assistant Attorney General. Bear in mind I have been working on this since 1936 and I have been attempting to educate eight different Assistant Attorney Generals in charge of the Antitrust Division.

The CHAIRMAN. You placed the date when Judge Hansen was head of the Antitrust Division.

Well, now, I will rule that if you want to supply the information, it would not be made a part of the record, but would be submitted for the committee to consider.

However, if you feel that this would involve a violation of confidential communications, why, of course, we will have to accept that, and you need not file this. But I thought it would help your cause if we had the information, and I am sure it was asked so that we could be enlightened on it, sir.

Mr. CASSAT. I am going to read you a statement in just a few minutes, as soon as Mr. Jones is finished. I think I answer quite a few of these things in my statement, and I would like very much to submit myself to these questions after my statement has been put in the record.

Mr. MALETZ. Mr. Jones, is it your position that by virtue of the relationship between GMAC and GM, General Motors Acceptance Corp. has an advantage with General Motors' dealers insofar as providing GMAC financing?

Mr. JONES. Oh, there is no question about it; no question about it. Ford told the Federal courts:

General Motors and General Motors Acceptance Corp. wear the same hat. If a GMAC representative goes into a dealership, he is a General Motors man or, if a General Motors representative goes in, he is a GMAC man.

This is not my word, this is what Ford told the Supreme Court, and said—then he said this:

Even if General Motors Acceptance Corp. were not owned by General Motors, just had that name, that would be enough for them to get the business; and, therefore, with that, no acquisition costs, they could furnish wholesale at practically no expense to their dealers, whereas we could not. This is their statement.

Mr. MALETZ. After listening to your testimony this morning and your testimony at this very moment about the fact that General Motors has no acquisition costs—

Mr. JONES. GMAC.

Mr. MALETZ. I direct your attention to a statement that was filed by General Motors before the Senate Antitrust Subcommittee, I think it is to be found at page 455 of the hearings. General Motors pointed out that its acquisition costs approximate 30 percent of total operating expenses.

Mr. JONES. Page 455?

Mr. MALETZ. Yes, sir, page 455.

Mr. JONES. Are you starting at (b) down there?

Mr. MALETZ. The fourth full paragraph from the bottom. General Motors says that—

Based on its own analyses, GMAC acquisition costs (sales effort, business promotion and the cost of purchasing and processing of new volume) together with a fair share of overhead, run in the neighborhood of 30 percent of total operating expenses.

Mr. JONES. He goes on and says:

A proper comparison can only be secured by the establishment of a specific formula for use by all companies. If such a formula is established, GMAC will be very happy to submit to the committee its cost for confidential comparison. Of 30 percent of total operating expense.

Now, somewhere else they compare, also, with Interstate Finance, whose president happens to be right here at my side.

He states in the paragraph above, and I have not read this for a couple of years, but I remember a little bit about it:

Claims have been made in recent testimony that GMAC has lower acquisition costs.

Now, follow this:

The president of the Interstate Finance Corp., testifying on April 16, 1959, said: "My acquisition costs are 30 percent of my entire income and theirs [GMAC's] are practically nothing."

That is of the entire income. Now, let us go down to the GM statement. GM said, based on its own analysis, GMAC acquisition costs, business promotion and other costs of purchasing and processing of new volumes, together with a fair share of the overhead, run in the neighborhood of 30 percent of operating expenses. That is 30 percent of two different things, and a very important difference.

Mr. Cassat had said 30 percent of the total income, and this fellow—this is the kind of doubletalk, gentlemen, that you get, just as sure as the world.

Mr. MALETZ. What you are saying, then, is this, Mr. Jones:

That General Motors' acquisition costs are far less than the acquisition costs of sales finance companies, is that right?

Mr. JONES. On this testimony right here, one is 30 percent of its expenses, and I think he goes on and says that you can see our expenses are about the same as those of Mr. Cassat.

But Mr. Cassat told about 30 percent of his gross income and they were talking about 30 percent of their expenses, which would be 30 percent of about 40 percent of what Mr. Cassat was talking about.

So it would be 12 compared with 30.

Mr. MALETZ. Mr. Jones, may I ask you this.

You operate a sales finance company. Are you able to buy sales contracts from General Motors dealers?

Mr. JONES. We are able to buy contracts from General Motors dealers, mostly used cars, because in our area we can handle used cars cheaper than they can, because they are supervised out of New York.

In handling used car contracts you use more labor. Our money costs are higher than their costs on account of the leverage, the subsidy I was talking about. I can offset it with less supervisory labor costs. I buy a great deal of General Motors dealers used-car paper.

Mr. MALETZ. What about new-car paper?

Mr. JONES. New-car paper, I do not get very much, very little.

Mr. MALETZ. Why not?

Mr. JONES. Once in a while I get it because some customer, who likes to do business with us, will insist on it.

The CHAIRMAN. Why do you not get new cars?

Mr. JONES. GMAC has become entrenched with those dealers, and they know it is more convenient, as the gentleman over here says, to do business with GMAC for the overall convenience of the dealers overall operation.

The CHAIRMAN. Is there something more than convenience involved? Would they suffer, if they would give you the business rather than General Motors Acceptance Corp.?

Mr. JONES. Yes, they would, but today they do not do it like they used to. They used to just come out and hit the guy over the head and say: "You either do this, do business with GMAC, or we will cancel your contract."

They do not do that anymore with the consent decree.

The CHAIRMAN. What do they do?

Mr. JONES. What they would do would be several things. Suddenly they would not be getting the kind of cars they wanted. That would be one way to do it.

Another way, they might come down and say: "Well, you are not selling very many of these 5-ton trucks, so we are going to ship you a couple 5-ton trucks, and then we are going to spend the weekend here going over your stock inventory, because we do not think you have enough inventory of parts to take care of your community," so they spend the time there and set up a big order.

Now, it does not take this gentleman very long to realize——

The CHAIRMAN. Have you proof of that?

Mr. JONES. Sure. You could get proof of it. I do not have it this minute but I am telling you what happens, but I would have a hard time getting proof, because you can hardly get witnesses of any kind to testify against General Motors.

We formerly obtained a whole group of dealers to testify about these things when GM was indicted and convicted. That is the reason why General Motors was convicted.

But you just cannot go out on the spur of the moment and get it.

Mr. McCULLOCH. Mr. Chairman, I think your last question was an excellent one. We cannot responsibly legislate on rumor or hearsay stories. If Mr. Jones can secure for us the name and address of agents who have been subjected to this procedure in the last 5 years, it would be very helpful to substantiate a story which presently is not based firmly on evidence.



Now, I have a couple of other questions.

I noted that your sales finance company was able to get few, if any, new car financing contracts from agencies of General Motors.

Did I understand that statement right?

Mr. JONES. Yes.

Mr. McCULLOCH. Could you furnish in understandable detail the cost of financing a new automobile by your sales finance company in accordance with the examples about which we were talking before lunch, and the cost of financing the same kind of new automobile by GMAC and by Ford Motor Credit Co.?

Mr. JONES. Sure, I can tell you right now. I can tell you now.

Mr. McCULLOCH. And can you also furnish the cost of financing the purchase of that kind of automobile through your commercial bank, the commercial bank of which you are president, in comparison with the costs of financing the same automobile by GMAC or by Ford Motor Credit Co.?

Mr. JONES. Yes, sir.

(The information referred to appears at p. 315.)

Mr. McCULLOCH. Will you furnish that for the record?

Mr. JONES. I will give it right now. It is easy, right now.

Mr. McCULLOCH. I would be very happy if you would furnish it in writing.

Mr. JONES. It is simple.

Mr. McCULLOCH. In order that we may look at it.

Mr. JONES. I will give you a complete statement. This is not a tough business. We finance it at \$5.15.

Mr. McCULLOCH. Are you talking about the sales finance company or the commercial bank?

Mr. JONES. Both, both.

Mr. McCULLOCH. Are the terms and rates, for both the sales finance company and the commercial bank of which you are an officer, identical?

Mr. JONES. No, sir. They are not identical with all situations even in a finance company.

Mr. McCULLOCH. How can you reply to me accurately, then, that you are giving me an answer that applies to both?

Mr. JONES. For the same type of paper, Mr. McCulloch, that GMAC buys, for the same quality of paper, I give the same rates.

I cannot cheat that dealer. He knows. And if he can sell that contract to GMAC at \$5.15 then I can only get it at \$5.15, that is the only way I can get it.

But because of the GM-GMAC relationship, I am less apt to get it. Now, you have paper that might qualify for a higher rate than \$5.15 that is higher risk paper. You understand the dealer knows he must recourse his paper with GMAC.

That is their policy; those are their statements. GMAC is on record plenty of times about that. So the dealer, wanting to please General Motors, and having six or seven finance companies, as I explained this morning, coming in wanting to do business, "Please sell us some contracts," he will sell his cream paper to GMAC and his off paper, marginal paper, to other finance companies.

Now, I would be foolish to buy the off-color at exactly the same rate as he is selling his cream paper to them, but if I can get cream paper, I will do it at \$5.15.

Mr. McCULLOCH. Do you have the loss ratio between the two kinds of papers that you are now discussing?

Mr. JONES. The loss ratio between recourse and nonrecourse?

Mr. McCULLOCH. That is right.

Mr. JONES. Almost all of our paper is without recourse so our loss ratio is without recourse.

Mr. McCULLOCH. Can you give us the current percentage of loss, on this one hand, and the percentage of loss over a period of 1, 2, 3, 4, or 5 years, or any period that is convenient for you?

Mr. JONES. You are talking about the recourse paper of General Motors?

Mr. McCULLOCH. Both kinds of paper.

The CHAIRMAN. At this point I would like to read into the record just briefly a statement from the staff report of the Committee on the Judiciary of the U.S. Senate, entitled "Study of the Antitrust Laws," particularly with reference to General Motors. On page 707 of that statement there is the following:

The record clearly shows that insofar as financing is concerned, there is a General Motors market and a non-General Motors market; that GMAC effectively controls the General Motors market to the exclusion of other finance companies and banks.

None of the competing finance companies have been able effectively to operate to any large extent in the General Motors market either wholesale or retail.

Now, I would like to ask you the following, Mr. Jones:

You say on page 20 of your statement:

GM's power over dealers by controlling finance and insurance is why Ford is imitating GM in securing its insurance and finance subsidiary.

Expand on that, will you? Why is Ford imitating General motors?

Mr. JONES. Ford is imitating General Motors——

The CHAIRMAN. You indicate below——

Mr. JONES. I cannot do it better than to tell you what Ford has said and I copied it right down here.

The CHAIRMAN. Let us hear it.

Mr. JONES. Ford summed up the situation aptly before the U.S. court when it described GM's advantages. After several unsuccessful earlier attempts to modify its consent decree, which prohibited a finance subsidiary for Ford, Ford in another attempt in 1946 stated before the U.S. Supreme Court:

Respondent——

that is Ford——

The CHAIRMAN. U.S. district court.

Mr. JONES. That is correct.

Respondent——

Ford——

feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of the products and it feels that its inability to do this in the past has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this respondent to all cars sold by all manufacturers.

Respondent is, therefore, confronted with the necessity of taking some steps to overcome this competitive disadvantage. Ford's loss of sales referred to above could have been, and were gained, only by the then only extensive owner of a finance and insurance subsidiary, General Motors. All other manufacturers similarly lost sales to General Motors for the same reason.

Ford then was saying, in effect, to the Federal court: (1) An automobile manufacturer with a finance and insurance subsidiary has an unnatural advantage over a manufacturer without a finance and insurance subsidiary.

The CHAIRMAN. Now, I would like to ask your counsel, if I may, the statements made by Mr. Jones on page 21 are, as follows, the last paragraph:

The Department of Justice in the intervening years has taken the position that the consent decree makes the issue of GMAC divestiture *res adjudicata*, not subject to reopening.

Where did you get that conclusion from?

Mr. JONES. You are asking me?

The CHAIRMAN. No, your attorney.

Mr. JONES. He is not an attorney.

Mr. CASSAT. I can answer it, though.

The CHAIRMAN. Are you an attorney?

Mr. JONES. No, he is not an attorney.

Mr. CASSAT. I guess I am the only one in the room that is not.

The CHAIRMAN. Who is your counsel here?

Mr. JONES. George Omacht is present. He is counsel for our association.

The CHAIRMAN. Let him step forward.

Mr. JONES. This is Mr. George Omacht. He is chairman of our legal committee and senior counsel for Associates Investment Co. of South Bend, Ind.

The CHAIRMAN. Are you an attorney?

Mr. OMACHT. Yes, sir.

The CHAIRMAN. I asked a question and Mr. Jones stated:

The Department of Justice in the intervening years has taken the position that the consent decree makes the issue of GMAC divestiture *res adjudicata*, not subject to reopening.

What is your comment on that and where did that conclusion come from?

Mr. OMACHT. As one of a committee, we had an appointment with Herbert Brownell when he was Attorney General. He took us to Judge Hansen, who was then head of the Antitrust Division, and we pointed out to these men that, regardless of the consent decree, it did not correct the situation, that there was still pressure upon the dealers to do business with GMAC, and we said, "Can't this consent decree be worked over in some way?"

They said they would brief the matter, and indicated they thought the consent decree was *res adjudicata*; that it could not be opened to provide divestiture, since originally before the court there was no divestiture provided.

So they asked us to return and we returned, and Mr. Herbert Kramer was there. He was one of the assistants to Judge Hansen. They had prepared a letter to us stating that the consent decree was *res adjudicata* on this point, and that you could not open the consent decree with the purpose of obtaining divestiture.

Now, there is a provision in the consent decree which states it can be opened to correct certain minor defects, but not to jump from the subject of an injunctive relief to a relief by divestiture. We have had that opinion from Attorney Generals ever since the consent decree was entered.

The CHAIRMAN. Have you had such an opinion from the present Attorney General?

Mr. OMACHT. Yes.

You did not ask me if it was in writing, did you?

The CHAIRMAN. What is that?

Mr. OMACHT. You did not ask me if it was Mr. Loevinger's opinion that was in writing? It was not in writing, but we have talked to him about it.

The CHAIRMAN. And if it is true that divestiture is *res adjudicata*, and in view of the continued affiliation of GM and GMAC would that not be the best reason in the world why you come to Congress for relief?

Mr. OMACHT. It seems that Congress has the only remedy to offer us; that this consent decree is a privilege to be affiliated that cannot be changed by any legal action.

Mr. McCULLOCH. Mr. Chairman, I would like to ask counsel for the association, if he will furnish for the record a copy of the letter from Attorney General Brownell, of which he has spoken. My understanding of his statement is that it was the opinion of the association or of the counsel for the association that the matter might have been *res adjudicata*?

If you have any briefs on the subject, would you furnish one copy of each brief to the committee?

Mr. OMACHT. Now, as to this letter, it was turned over to Russell Hardy, who was then representing the association, and I do not know whether or not I can get it for you, but I will try.

As to the brief, Thurman Arnold—we employed Judge Thurman Arnold to look into the matter. He gave us this opinion. He appeared before the Senate committee and testified the matter was *res adjudicata*.

Also, only recently we talked to Mr. Holmes Baldridge, who was in the Department and had to do with the entering of this consent decree in 1952, and he briefed the matter and advised Mr. Jones and me that, in his opinion, the matter was *res adjudicata*.

Mr. McCULLOCH. Did he, in addition to his opinion, furnish you, as chief counsel or senior counsel of the association, a brief upon which he based his opinion?

Mr. OMACHT. Yes.

It was a very rough brief. I will try getting that for you.

(The information referred to appears at p. 226.)

Mr. McCULLOCH. Can you furnish that brief, or any other brief on this particular point that have been used by you or submitted to the Department of Justice or the Federal Trade Commission?

Mr. OMACHT. Yes, we will furnish you anything in writing that we have.

I do not know whether I can get that letter the Department wrote, but perhaps you folks could get a copy from the Department.

(The information referred to appears at p. 315.)

Mr. McCULLOCH. Mr. Chairman, I would be pleased if these briefs could be furnished for the record.

The CHAIRMAN. Counsel is instructed to ask the Department of Justice for a copy of all pertinent documents they have on this matter.

(The information referred to appears at pp. 91-215.)

Mr. MEADER. Mr. Omacht, you mentioned that Judge Arnold was employed by you. Do you mean by the American Finance Conference?

Mr. OMACHT. No.

Mr. MEADER. Or by your own company?

Mr. OMACHT. He was employed by my own company, Associates Investment Co., the company I work for, I mean to say.

Mr. MEADER. And when he testified before the Senate Committee on page 256 of their hearings, he said:

I should disclose that I represent a client who is interested in those bills and who asked me to give him a legal opinion on the question of ownership of finance companies by major automobile manufacturers.

He did not in his testimony, as I read it, unless I missed it, disclose the identity of his client at that time. Was that your company?

Mr. OMACHT. That was our company. We had asked him to look into the question of whether or not this was res adjudicata, and whether or not a civil suit would lie by some finance company that was aggrieved.

Mr. MEADER. But his testimony before the Senate Committee was not only, as he mentioned it, his own personal views, but he was also testifying on behalf of your—what is it—Associates Investment Co.?

Mr. OMACHT. No, he was not testifying on our behalf. We had asked him for his opinion as to the possibility of bringing a civil action, and he gave us an opinion on that matter.

Mr. CRABTREE. Mr. Chairman, may I ask one question?

The CHAIRMAN. Go ahead.

Mr. CRABTREE. Mr. Omacht, with respect to a private civil suit, the consent decree would not be res adjudicata as to any private suit which might be brought, is that correct?

Mr. OMACHT. That is right. And that was his opinion.

Mr. CRABTREE. Then you do have this avenue, in addition to the avenue of coming to Congress, open to you, is that correct?

Mr. OMACHT. Yes, but it is not a very favorable route.

The CHAIRMAN. A private treble-damage suit is a very difficult suit.

Mr. OMACHT. As I understand it, the antitrust attorneys are generally of the opinion that a suit for divestiture would lie in a civil action but there never has been a civil action where, even though the prayer was for divestiture, divestiture was granted, so you would be doing something that never was done before, so far as I know.

Mr. CRABTREE. Have you definitely ruled against the possibility of bringing a private suit?

Mr. OMACHT. I?

Mr. CRABTREE. You, sir, or your company?

Mr. OMACHT. Well, as a lawyer, I do not like to discourage lawsuits.

Mr. CRABTREE. Just one other question, sir, with respect to the issue of res adjudicata.

Is it your personal opinion that the decree is res adjudicata with respect to acts which have occurred after the entry of the decree?

Mr. OMACHT. The distinction seems to be—and you understand I am not an antitrust lawyer. I have to rely upon the antitrust lawyers I consult.

But the understanding I have, if the complaint is of a continuation of the same acts, then the decree is *res adjudicata*, because the court had at the time the decree was entered the privilege of either entering a divestiture or of granting injunctive relief.

Now, if there were some new form of action, and I think you will find that Thurmond Arnold in his statement to the committee here—not here, in the Senate—said that if there were a general breaking breaking up of General Motors so that it was all a part of one big program, then he felt there might be divestiture granted of GMAC.

Mr. CRABTREE. If I recall correctly, Judge Arnold said if the Government brought a section 2 Sherman Act case, then in that case the Government could—

Mr. OMACHT. That would be to break up all or a great many of the subsidiaries, the whole program of GM.

Mr. CRABTREE. If the Government should be successful in a section 2 Sherman Act case, it is my understanding that the Government could request divestiture of GMAC, as well as divestiture of the other operating divisions of General Motors.

Mr. OMACHT. Yes. It would have to be a part of a general program, the way I understand it.

Now, maybe you know more about antitrust law than I do. I am not too familiar with it.

Mr. CRABTREE. But my question was directed more at whether or not, in your opinion, the consent decree is *res adjudicata* as to acts which occurred after the entry of the decree?

Mr. OMACHT. Yes.

Well, let us take it this way. Some of the proof and allegations in the criminal suit were that General Motors demanded the dealers do business with GMAC.

Now, if that act continues now, then you would have to go in under the injunctive provisions of the consent decree. Now, I am giving you a lot of law, and I am not an expert in a field, but that is the way I understand it.

Mr. CRABTREE. You could go in to modify the consent decree.

Mr. OMACHT. No, not to modify. To claim a violation of the injunction, yes.

Mr. MEADER. By contempt proceedings.

Mr. OMACHT. Contempt proceedings, that is right.

The CHAIRMAN. I think we have pursued this matter sufficiently, and I want to thank you, Mr. Jones, and your colleagues for your testimony and your patience. You have been patient and we have been patient, but we want to get on with some of the other witnesses.

Mr. MEADER. Could you ask Mr. Jones to tell us what his acquisition cost is either on the basis of total operating expense or total income?

The CHAIRMAN. Will you furnish that?

Mr. JONES. I won't be able to give you the cost of acquisitions because, as Mr. Stradella said if all companies would break down their expenses on the same basis then we could compare acquisition costs. But I don't know of any finance companies who separate expenses in a manner so they could identify a part of them as acquisition costs and the rest as other expenses, but you have a pretty good idea of it—Stradella said 30 percent of his expenses, while Mr. Cassat said 30

percent of his total income. I would say Mr. Cassat's estimate, in my judgment, is about right, for independents that of total gross income independents will spend about 30 percent of it getting your business.

Mr. MEADER. Is that true of your company, do you believe?

Mr. JONES. I believe that is about it.

Mr. MEADER. And you believe that is generally true with the independent companies?

Mr. JONES. I think so; yes, sir.

The CHAIRMAN. Thank you, Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is a distinguished former State senator from the State of Indiana, the Honorable Earl M. Utterback, of Kokomo, Ind.

We are glad to have you with us.

(The statement referred to at p. 7 follows:)

INTRODUCTION TO STATEMENT BY PAUL JONES  
BEFORE HOUSE ANTITRUST SUBCOMMITTEE

As far as I am concerned all other reasons for this legislation disappear into oblivion by comparison to what this bill will do for the American public and our economy.

The need for this legislation is based on these facts that we will explain:

General Motors years ago created side incomes for its dealers from factory-owned sales finance and insurance subsidiaries that have practically no acquisition costs. These incomes round out five pockets of dealer income, all controlled by GM. Two of them are delayed and act as a pension would to hold the dealers for GM.

These side incomes, being free of acquisition cost and requiring only simple administrative expense, were greater than dealers in non-GM cars could match from independent finance companies and insurance companies which had normal expenses.

To increase its advantage, GM has created subsidies for its finance subsidiary.

One subsidy alone packs into the cost of every product sold by GM, at least \$1.00 for each \$100 of sales price, or \$40. on a \$4,000 new car.

Furthermore, there is not one new-car sale out of 10,000 that GMAC finances for GM cars that escapes the finance pack, as defined by GM's own statement before the Federal Trade



Commission.

We will show that GM has used the finance pack as a merchandising tool to create a monopoly in the automobile business.

Through the holding power of these five pockets of income and the subsidies, GM has created a monopoly among the automobile dealers of this country.

The auto dealer pool is frozen -- There is no mobility between GM dealers and non-GM dealers. GM dealers would be foolish to switch to non-GM franchises and endanger these special incomes and particularly the delayed incomes. GM, like all potential monopolists, must be as adept at turning off their power as turning it on. Therefore GM does not dare to take dealers from other manufacturers to the full extent that it could.

Now what happens for the public when GMAC is independent?

As important as it is that GMAC's services -- resting solely on their own merits -- will be available to non-GM dealers, the real importance is that the log-jam in dealers will be broken.

The GM dealer can move to non-GM franchises and take his finance source with him.

The dealer will not fear losing the lush profits out of the financing reserves that are held by GMAC on its books. The GM dealer will not fear the loss of replacement of cars and parts and repairs for the cars the dealer has insured. The dealer will then be free to move.

Non-GM dealers would be strengthened. Their numbers would in-

crease, and the non-GM factories would be strengthened by this because their life-blood is their dealer organizations.

The benefits would not be revolutionary, but gradually all manufacturers would become strong. Competition would be on price, and administered prices would be eliminated.

Prices then would start to go down. GM would price to make normal profits.

We would be shipping cars out of this country instead of in.

With our domestic market strengthened and <sup>foreign</sup> market restored, jobs would be created in South Bend, Ind., in Racine, Wis., in Detroit, and in the 10's of thousands of other towns in the land which are touched by the auto industry.

Finally, and most importantly, if we are not working for a free marketplace we don't belong here. We are ready to stand or fall on our ability to do business in a free marketplace. We think the automobile manufacturers should have to be equally committed to a free marketplace.

Good morning, Mr. Chairman and members of the House Judiciary Committee.

I am Paul Jones. I have the following titles which have little or nothing to do with the Bill before you.

I am President of American Security Company of Marion, Indiana, a Sales Finance Company, now celebrating its 40th year. I have been associated with that company for almost 30 years. First, as its bookkeeper 39 years ago, its cashier, then its collector, solicitor and single office manager.

I am President of the Glenview State Bank, a small bank about 25 miles from Chicago's loop. This bank also is celebrating its 40th year - my connection is limited to two years - chiefly to add a Sales Finance Department which it did not have before.

I am also Chairman of the Executive Committee of the American Finance Conference, an association of 244 Sales Finance Companies, none of whose stock is owned by an automobile manufacturing company.

House Bill 71, provides in brief that it shall be unlawful for a motor vehicle manufacturer to own a corporation engaged in Sales Financing insuring of motor vehicles.

This provision, among other things, would cause GMAC to be owned by the stockholders of General Motors.

The effects of this bill, and the reasons for my support of it -- the effects would be to dispossess General Motors of the tools that have enabled General Motors to dominate the great American Automobile industry and to create conditions incompatible with our American culture, economic beliefs, and specifically incompatible with a free market place.

What will happen when this bill passes? GMAC will be chiefly owned by people, the present stockholders of General Motors Corporation. What will that do?

Well, the May 20th, 1961, issue of the famous Kipling Washington Letter states:

"GM and Ford can keep their financing firms. The Bill to make them sell will fail. Congress thinks GM and Ford charge less than independent firms.

"Congress", that is you, thinks -- and prior to the evidence furnished by the people who are to testify, according to Kiplinger, or whoever furnished Kiplinger this choice item, "that GM and Ford", the present corporate owners "will charge less than these same finance companies will charge" when they are owned by the people, who, incidentally, are the present GM stockholders. There seems to be something mysteriously diabolical here about people-ownership. This sounds like a carry-over from the Senate Hear-

ings held two years ago before the Senate Antitrust Subcommittee where Senators Kefauver, O'Mahoney and Hennings had introduced a similar bill to the one now considered before this committee. One witness, a high official of Ford Motor Company, held a similar view and he warned that if GMAC was divested there would be higher charges.

He made some shocking statements.

Make no mistake about it, there are high finance charges, taxed on time buyers. His oral statements are worth reviewing. They are gems but only if they are compared with his written statements filed quite a time after the oral testimony. If this committee pursues this information along with other facts, you will find the real gold at the end of the rainbow: The motive for the high charges, the reasons for the origination of high charges in the financing of cars and for its universal use and the reasons for its perpetuation, and last but not least, you will get facts that will enable you, Congress, to determine which of the two are the final recipients of these high charges -

which of the two:

- a) Automobile manufacturing corporations who own sales finance companies; or,
  - b) People who own sales finance corporations.
- (The independents.)

Kiplinger said, "Congress thinks GM and Ford charge less than independent firms" or people-owned firms. What does that Ford official say?

At Page 212 of the Hearings Report, First Session of the 86th Congress of the Subcommittee on Antitrust and Monopoly, you will find the following statements. Mr. Yntema, the Ford representative, predicted if GMAC is divorced:

"First, the growth of GMAC at the expense of other finance companies and then a rise in finance and insurance rates. Neither of these developments is pleasant to contemplate. In any event - this is the key sentence here - after the separation of GMAC from GM, the drive in GMAC to offer a streamlined finance and insurance service at low rates will probably decline and disappear.

"The reason I say that is this: Ever since the first lender, there has been a difficulty in this relationship between the lender and the consumer. What we have found out is that there is a great temptation for the lender to take advantage of the ignorance of the consumer, and the consumer is abysmally ignorant in this area, and that is why we have State regulations of the small loan companies. You probably know something about the history of that.

"...We tried to simplify interest charges and make them intelligible. That is why we have regulations in many States with respect to the charges that can be made.

"I think GMAC could make more money than it is now making by charging a higher rate, and I think that in the long run there would be a great temptation to do that. That is the way the other independent finance companies, by and large, operate.

"I think at present GMAC is influenced by the desire of General Motors to have this service

performed in a streamlined fashion without all the frills. That is a very important factor and I think that it would be a difference. I am afraid you would find GMAC beginning to be like other finance companies.

"At present, in my judgment, GMAC's type of service, that is, the streamlined, nonfrill service, is possibly influenced by General Motors, because that is one clear difference between them and the other companies. I can't account for it in any other way. I would be afraid that if they were split off from General Motors, they would then begin to behave like other finance companies, that they would try to make just as much money as they could from package insurance, and what not.

"...All I am saying is that human beings are human, and if you split off GMAC, some of the pressures from General Motors which are good pressures, which are good for the country, which are good for the consumer, good for the dealer, are going to disappear.

"Mr. Dixon. And good for General Motors.

"Mr. Yntema. All right. But in this particular case what is good for the country incidentally happens to be good for General Motors."

It is apparent that Mr. Yntema has more faith in the goodness of General Motors and their influence to keep low profits and take care of the people of the country than he has in the people who might own GMAC afterwards and how they would treat their neighbors and other people. Only Ford and GM would be interested in low profits. It is this gentleman's testimony which caused some Senators and some people to believe that GMAC when separated and owned by people would charge higher rates than GMAC owned by GM. In his testimony previous to this statement he had pre-

sented charts showing the annual profits of GMAC which run better than 20% after taxes and the charts of other leading large independent finance companies at substantially less profits and some of the smaller ones with half the profit of GMAC. Yet, he states that if GMAC was divested it would become like the independent finance companies and want to make the higher profits that the independent finance companies made and actually made this story stick in spite of his own statistics which showed that independents made substantially less than GMAC.

Then, as shown in the statement above, he stated that the operations of the independents were like the "loan sharks," who take advantage of the people in the loans made for buying cars. Therefore, as soon as people owned GMAC, then GMAC would revert to "loan shark" operations. That is certainly the implication.

What is the truth about finance charges? Because there is danger of a misunderstanding of the activities and function of the finance company and a mis-judgment of this situation, such as Mr. Yntema took advantage of in the statements just quoted, I think this pamphlet we have prepared showing what a sales finance company does would be most helpful.

"A sales finance company performs three principal functions:

1. It extends loans to retail dealers to inventory the products which they sell. Such loans are commonly called "Wholesale Receivables."



2. It purchases from dealers, instalment(time-sales) contracts that have been entered into between such dealers and the time buyers of dealers' products. Contracts thus purchased are usually referred to as "Retail Receivables."
3. It sometimes handles the insurance on the products sold by the dealer on a time-price basis. This may be done through an insurance subsidiary or another insurance company.

## II

Loans made to dealers for the purpose of carrying inventories are usually made at the finance companies' cost, or lower, since the finance companies expect to make their profit from the "discount" they get off the face amounts of the time-sales contracts purchases -- their retail receivables.

The dealer, not the finance company, fixes the "time-price", including the finance charge, which the time-buyer pays for the privilege of paying for the product in the future. Usually the finance charge is greater than the amount of the discount which the finance company gets. However, in a minority of cases, it may be the same. In very rare instances it may be less.

## III

Sales finance companies do not make loans to consumers for the purpose of purchasing the dealer's products. No relationship exists between the sales finance company and the time buyer until after the instalment sales contract is purchased from the dealer by the sales finance company. The Financial-Vice President of a large motor car manufacturer has described this customer-dealer-finance company relationship in these words:

"In a typical sales financing transaction a dealer negotiates with his customer an installment contract for the sale of an automobile. The contract includes a finance rate negotiated within a framework of such factors as competition, State regulation, and credit standing. A finance company then purchases this contract from the dealer at a discount rate."

IV

Sales finance companies secure their business through the active and persistent solicitation of retail dealers for the sale of their contracts. Outside solicitors of such finance companies call on dealers almost daily and are in frequent touch with them by 'phone; consequently, each dealer has a number of sales finance companies to which he may sell his contracts, at competitive prices. Therefore, competitive practices in the sales financing industry are unlike those that exist among banks and other lending institutions for borrower customers, where such borrowers usually go into the offices of the lending institutions to make their requests for loan accommodations.

You can see from this pamphlet that a sales finance company never makes loans. They deal completely with sophisticated automobile dealers who handle dozens of contracts a month, and the larger ones dozens of them every day.

Previously, Mr. Yntema's testimony definitely inferred that finance companies loan money at high charges for the purchase of automobiles and that only people-owned finance companies did this. Neither of these happen to be true. Mr. Yntema knows it. No sales finance company can take advantage of a businessman who handles the same transactions repetitively. It also is important to correct the general impression that the relationship between finance companies and dealers are similar with the relationship that exists when most businessmen obtain credit from a bank. The businessman goes to the bank, even though they have a splendid finance statement, and says, "Won't you please, Mr. Banker, loan me some money on this statement?" Finance company operation is in reverse. All of them have solicitors who call on dealers and say, "Please, Mr. Dealer, will you sell us a contract."

Now, let's get at the truth about high finance charges. High finance charges do not exist because people own sales finance companies direct instead of owned by factories. High finance charges are not due to any difference that exists between the discount rate of a factory-owned finance company and those of a people-owned finance company. It is accounted for by the "pack" added by a dealer in his time contract entered into between the dealer and the time buyer. What is a pack?

GMAC has defined a pack for us.

In 1938 GMAC very simply defined a "pack" in its brief before the Federal Trade Commission. GMAC defined any amount above its discount as a "pack", as explained in these words:

"By reference to this chart he (the dealer) is able to determine the amount of the finance charge or differential he is to add to the basic price in making up the total time price of the contract he expects to sell. The chart amount and the differential contained in the total time price will correspond if the dealer conducts his instalment sales on the basis of adding only such differential into the time price to the buyer as equals the amount which the chart indicates GMAC, in paying the dealer for the contract, will deduct from the deferred balance payable under the instalment contract (the buyer having made a down payment to the dealer or received a used car trade allowance). In this case, the net result to the dealer is the same as though he had sold the car in a cash sale, since the down payment received and the amount of GMAC's payment for the contract equal the cash delivered price of the car.

"On the other hand, if when he expects to sell the contract the dealer 'packs' the finance charge or differential used in the computation of his time price by making it greater than the amount indicated in the chart, the net result, if the finance company buys the contract at the indicated discount under those circumstances is that

the dealer will receive more than the cash price because he will have charged the buyer a greater time price differential than the GMAC disco unt cost the dealer." (Under-score ours).

Size of GMAC Reserve Payments

How appreciable the excess of GMAC excessive charges or packs over losses has become was indicated by Charles G. Stradella, president of GMAC, at a Senate Hearing in 1956. \* He reported that GMAC paid its dealers \$5,901 in reserves per new car actually repossessed in 1952, and these amounts in other years: 1950, \$4,662; 1951, \$4,318; 1953, \$3,499; 1954, \$2,026; 1955, \$2,521. Explaining these figures, Stradella said that "the average dealer would be able to take that much of a loss before he was in the red." He observed further:

"Since the average amount initially advanced on new-car contracts is currently only \$1,878, the figures in the table show that the dealer's participation in the finance charge has been considerably more than sufficient to absorb losses taken on the resale of new-car repossessions during the past six years."

If these charges were not high charges by a General Motors owned finance company, what were they? He could have explained also that the repossessed cars are returned to the dealer's place of business at GMAC's expense for the dealer to re-sell to reduce such losses.

Based upon GMAC's own definition of the pack, not one deal in 1,000 probably not one in 10,000 deals, that GMAC has ever purchased or is now purchasing is without a pack that its time buyers must pay.

Present-day GMAC and Ford Motor Credit rate charts filed herewith provide for the very "pack" defined by GMAC. No matter how high a rate the dealer negotiates with the consumer -- in struggling to make a net profit

\*Automobile Marketing Practices, Hearings, Subcommittee of the Committee on Interstate and Foreign Commerce, U.S. Senate (84th Congress, 2nd Session, pt. 1, Government Printing Office, Washington, D.C.), P. 814.

on the total transaction -- the discount rate which the finance company charges the dealer remains constant.

A GMAC representative flatly admitted to an NRA official that the reserve (which GMAC introduced in 1925) came into the competitive picture before the bonus (which independents used as a counter-weapon). \*

The true nature of the reserve is explained by Russell Hardy, former special assistant to the Attorney General of the United States, writing in the Indiana Law Journal (Spring 1955):

"GM and GMAC gave the dealer participation the euphemistic label of 'repossession loss reserve', on the pretense it served solely to compensate the dealers for losses on defaulted finance notes. In 1933 Alfred P. Sloan, Jr., then president of General Motors, candidly stated that any 'appreciable excess' over actual repossession losses was 'unfair' to other finance companies'."

The National Bureau of Economic Research study of 1940 observed that "in 1936-1938, according to the samples collected by the Federal Trade Commission, the packs allowed by factory-preferred companies took, on the whole, a larger fraction of total charges than did those allowed by the other companies."

Correct though it was, Mr. Sloan's statement that "any appreciable excess" in GMAC reserves over actual repossession losses was unfair to other finance companies did not say enough.

"Any appreciable excess" works even greater hardship on competing manufacturers and their dealers, operating as they do in

\*Minutes of Meeting held in the Office of Division Administrator Leighton H. Peebles; in Room No. 3309, Department of Commerce Building, Washington, D.C., 10:30 A.M., October 8th, 1934.

a business where two-thirds of retail sales are financed and virtually 100% of factory shipments to dealers are financed, usually for 100% of dealer cost. These non-GM manufacturers and dealers share the handicaps of the independent sales finance companies which serve them.

Neither dealers or finance companies keep any part of the pack. Finance companies simply collect it, turn it over to the dealer and the dealer merely acts as a cash register. He keeps it just long enough to turn it over to the manufacturer for payment of the new car he has sold for less than cost of sales.

This is purely exploitation of the automobile dealer. He gets the blame and General Motors gets the profits. Here is a copy of a letter from a small Chrysler dealer in a town of 40,000 to the secretary of the Automobile Dealers Association of Indiana. He wraps it up in a nut shell.

Here is additional confirmation of the Chrysler dealer's views, from a sizable Pontiac dealer of Albany, New York, and former President of NADA. Mr. Yager tells the story about the 'stimulator dealer', a dealer appointed by factories located strategically around the country, who forces the sale of cars through packing of finance charges and other bad practices, and such dealers force other dealers to imitate them. They have become such a merchandising factor that they have received a name in the industry, "Stimulator".

Here is the Time Magazine "article on Jim Moran" that was referred to by Mr. Yager on the same subject of side incomes and stimulator dealers.

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(The article referred to appears at p. 228)

COPY

May 19, 1961

Auto Dealers Association of Indiana  
224 N. Meridian St.,  
Indianapolis, Indiana

Dear Mr. Shaefer:

I do not share the views of Government control of Auto Dealers.

I think we can and should clean up our own mess, we created it. But it will have to be done on a National basis, probably through Nation Legislation Action.

Our troubles started about 1953 or 1954 when we started writing 36 and 42 month contracts. At the same time we started to sell the car at Factory Invoice and expecting our profits from Finance reserves and Insurance kick backs. The volume dealers or about 5% of dealer body seem to do well with this arrangement, but the 95% just do not have this potential to work with.

I would like to see all Reserves and Insurance kick backs outlawed and start selling cars at a profit again.

Every one would have an equal chance if this could happen, then give purchaser a Fair Finance Rate.

I think every one would be much happier and do a much better job selling cars.

Yours truly,

S/ Dalton Howard  
Howard Auto Sales & Service

STIMULATOR-DEALER CONCEPT IS HIT - Automotive News, April 17, 1961

ALBANY, N.Y. - The Albany Auto Dealers, Inc., endorsed last week an open letter addressed by M.H. Yager (Pontiac), former president of the association, a member of NADA's Industry Relations Committee and task-force leader, to Henry Ford II, president of Ford, criticizing the stimulator-dealer concept.

Here are excerpts from the letter:

"My first reaction was that Time in their issue of March 24th had done a considerable disservice to the automobile dealers of America in their feature story on your dealer, Mr. Jim Moran, of Chicago, so aptly titled 'Heyday of the Haggle' and sub-titled 'The Arabian Bazaar.'

"Mr. Moran apparently is quite a 'wheel' in the 'stimulator-dealer fraternity,' but he is not alone. All automobile manufacturers have appointed them, large and small, in all parts of the country. Though a small minority, their tactics, merchandising practices and 'ethics' have become the norm of the automotive distribution pattern, with the resultant dissipation of dealer profits almost to the vanishing point. Other dealers have had to emulate them to a greater or lesser degree, whether they wanted to or not...

"He reportedly did \$41 million in sales last year and his admitted \$117,000 profit works out to 285/1000 of one percent.

"NADA statistics show that the dealers of the nation only averaged 15 percent net last year.

"According to published reports, Ford Motor Co. in 1960 made a net pretax profit on sales of 15 percent. If Ford's profit figures were applied to Mr. Moran's sales, he would have made \$6,150,000 net instead of \$117,000.

"To put it still another way, these figures show that Ford Motor Co. made as much net on Mr. Moran's operation every working day as he did each month in 1960, or in just 12 working days Ford made as much net on this one dealership as the dealer did in a year.

"Something seems badly out of focus there. Historically the manufacturer or wholesaler takes the shorter end of profit on their larger volume, and the retailer a longer end on his lesser volume.

"We hear a good deal about the 'Battle of Main Street' between Ford and Chevrolet. When Ford comes up with a 15 percent net on sales and Chevrolet does even better--not much of their blood is spilled in that 'battle,' but there are some pretty gory Ford and Chevrolet dealers around the country. And, believe me, the rest of us sure get splattered, mauled and flayed in the melee. The 'battle' is indeed on 'Main Street,' not in Detroit.



"Mr. Moran is quoted as saying: 'If you're in the automobile business today and your only profit is in selling new cars, you aren't going to make money. You have to be in insurance, financing, the whole ball of wax.'

"If that is true, isn't it a serious indictment of those in control of the biggest merchandising business in the world that it has come to such a low ebb that it can't stand on its own feet? If we can't, who can?"

Now we are beginning to see how the side incomes, the major part of which is the packs, is part and parcel of the merchandising program of General Motors. Mr. Frederick M. Sutter, a former president of NADA, in a speech given to the American Finance Conference in 1959 stated:

(Excerpts taken from Frederick M. Sutter's speech before the AFC convention, November 4, 5, and 6, 1957.)

"One of our major problems is bootlegging. Another is cross-selling, which, as you probably know, is the trade term for a dealer retailing cars in another dealer's factory-allotted territory. Still another problem comes from the trade practices indulged by a minority. These practices bring disrepute to the entire industry. You know most of them -- false and misleading advertising, "bushing", padding finance charges, raising insurance costs, changing quoted figures, and even having the customer sign a contract in blank.

"These practices are indefensible. They are not in the public interest.

"Finding the solutions will require the full cooperation of dealers, manufacturers and finance people as well. I am happy to be able to tell you that top management in Detroit, though not yet agreeing on all details, does view the problems and the need for correction very much as we do. That is really not surprising for their interest and ours are similar.

"What is surprising, in view of this apparent agreement, is the type of some of the new dealers who are being appointed by the manufacturers. You are aware, I am sure, that any new dealer must be approved by the factory and if a dealer wishes to sell out he must first get factory approval of the purchaser. As you can expect, in some instances, no purchasers can be found.

"But, now and then, some veteran dealer decides to retire from a market that is attractive and desirable and he will have several prospective buyers. You would assume that the man with a good background and reputation would be first choice. But it often doesn't work out that way.

"More likely, a 'fast operator' is appointed -- evidently on the theory that he will get more volume. The new dealer may get this added volume, but he will do so with terrific loss of public confidence and good will. As you gentlemen know all too well, he does so with serious effect on substantial dealers in the area and on yourselves.

"Sometimes, there is a humorous twist in these dealers; recently, in an eastern metropolitan market, a very successful dealer representing one of the volume lines decided to sell. He found an excellent buyer but his zone office said "No!" Zone officials had other ideas. They brought around a smart stimulator dealer and said, "here's your buyer." That settled that.

"But, in this case, not quite. Before the sale could be completed the finance company discovered the proposed purchaser had nearly

Frederick M. Sutter's excerpts

\$150,000 out of trust and closed him up. It provoked a few chuckles among the substantial dealers, but, actually it was not so funny -- there is nothing humorous about a finance company losing more than \$100,000.

"Unfortunately, this story does not have a happy ending. The zone did not relent and give its approval to the desirable applicant. Instead it located another fast operator who had money and turned the deal over to him.

"The new dealer is now selling cars through misleading advertising and shady sales methods and is destroying the fine reputation formerly enjoyed by that dealership.

"Just so long as our manufacturers continue to appoint dealers of this sort, just so long will it be impossible to rebuild our industry as we must. We hope this will soon be a thing of the past."

# # # # #

(Underscoring ours.)

The manufacturers, not sales finance companies, have set the pattern for time charges. In the early years from 1915 up until 1938 all three motor car manufacturers either owned a finance company or were affiliated with them by contractual agreements.

Mr. Haberman, Vice President of CIT Corporation, explained the early relationship of an affiliated company when he stated before the NRA Meeting \* the followings:

"... Mr. Haberman: It might be an advantage to trace the history of the business. The Automobile Finance business began about 1915. I think our Company was probably the first in line. General Motors came along about 1919. We adopted a policy of distinct service to the manufacturer. Our operations are all by virtue of technical arrangement. Our relations are purely contractual. Our stock is publicly held. The dealer gave his full endorsement. At the time he received only 90% of the amount, and the other 10% was held.

"... Mr. Haberman: We have contractual arrangements which we are very proud of - built up over a long period of years - with Studebaker, Nash, Pierce-Arrow, Hup, etc. We have practically all - General Motors and Chrysler excepted. We have Ford. I showed Mr. Ratcliffe and Whiteside the paragraphs of our contracts that always go to the manufacturers, and they are limited to the simple statement that the motor manufacturers will recommend our services to the dealers."

The three large automobile manufacturing companies dominating the automobile market and the three factory-owned and factory affiliated companies dominating the plans of the finance business, set the pattern for the sales finance business and they have continued to do so to this date. If there were any desire on the part of GM or any other sizable manufacturer to eliminate

\*Minutes of Meeting held in the Office of Division Administrator Leighton H. Peebles, in Room No. 3309, Department of Commerce Building, Washington, D.C., on Monday, October 8th, 1934, at 10:30 o'clock A.M.

the pack, it could be easily done. The American Finance Conference has on two occasions, to which I have been a party, attempted to do this, once in conjunction with GM, and have been turned down.

MONOPOLY FACTORS THAT RETARD ECONOMIC GROWTH  
AND THE MORAL DETERIORATION OF ACCEPTING THEM

The essence of the traditional merchandising pattern consists of loading dealers with excess inventory. Then to unload the excessive inventory, dealers must sell new cars below dealer's cost of sales.

The loss of such sales is regained by the dealer from the side incomes originated years ago by GM and furnished by GM through its finance and insurance subsidiaries. These subsidiaries obtained their business volume as the result of GM's parental influence and coercion, thus eliminating normal acquisition costs. Both finance and insurance subsidiaries only bear the costs of administering the business.

Evidence of serious imbalance in the auto dealer's profit picture is set forth in this excerpt from the trade publication, Motor News Analysis, (April, 1960 issue):

"Many dealers entered April carrying 2 to 3 months' supply of NC's (new cars). Each car, in storage expense alone, will carry an abnormal burden of \$40.00 up.

"Forty dollars is more than dealers made in merchandising profit per unit in the relatively good year 1959. NADA's authoritative survey shows dealers last year averaged 1.4% pre-tax profit on volume, or \$74 per unit.

"But national finance firms estimate that of the \$74 per unit profit, an average of \$50 or better came in finance reserves, so that merchandising profit was less than \$25 per unit.

"Obviously, \$25 won't cover \$40 up in extraordinary storage expenses."

The warning implicit in the above article proved correct. Dealers' profits for the year 1960 slipped to 0.5% of volume, before taxes -- equal to only \$22 per car including finance profits (which finance men estimate to equal more than \$50 per car).

These figures show clearly that the average dealer's merchandising income is not adequate. The figures also show clearly a disproportion, with only one-third of profits coming from the merchandise and two-thirds from finance reserves in 1959, and an actual loss on car sales for 1960 without the offsetting finance income.

The 1959 and 1960 showings are typical.

Loaded with new cars, dealers that survive must sell their new cars at any price. Such is the merchandising pattern -- new cars are consistently sold at below dealer's cost of sales, forcing the mass of dealers to rely on side incomes, the finance profits (reserve and packs) and insurance commissions to offset the loss sustained on new car sales.

Significantly, it was GM that years ago introduced this far-sighted merchandising program that envisioned the use of side incomes.

GM created a sales finance subsidiary in 1919. By coercing GM dealers in those early days (proof: GM was indicted and

convicted in the U.S. District Court because of these activities and the Supreme Court upheld the conviction), GM became entrenched with its dealers and eliminated the substantial acquisition costs entailed in independent sales financing.

GM easily loaded dealers with inventory through GMAC. Years ago every dealer was required to give a "power of attorney" to a GM employee to sign notes and security documents which enabled GM to ship cars at will, according to evidence before the Federal courts.

Six years after the birth of GMAC, in 1925, GM announced its confidential policy of control of dealer financing for GMAC and the origination of dealer participation in the finance charge (dealer reserve).

By the concurrent creation of General Exchange Insurance Corporation, it laid the base for furnishing insurance commissions to GM dealers and gaining monopoly control of replacement of parts and cars under insurance losses.

The premium volume for the insurance company was acquired and increased by the same coercing tactics, integrated with the time sales financing of cars by GMAC, and GM could again augment these side incomes because of the elimination of acquisition costs.

Because of the no-acquisition costs nature of the business of these subsidiaries, other manufacturers could not match the side incomes through independent financial and insurance institutions.



In the contest to load dealers with new-car inventories and force their sale at below dealers' cost of sales, GM was unmatched by its competitors. Over the years GM has used the control of these side incomes to attract strong dealers from other manufacturers and then hold all captive in their own sales organization.

These two subsidiaries furnished the side incomes that rounded out the five pockets of unmatched income to GM dealers - all from GM and subsidiaries.

The five incomes consist of (1) markup on car and parts, (2) insurance commissions, (3) normal finance reserve, (4) overcharge or "pack" on the finance charge, (5) insurance repair and replacement. (The last three are delayed income which hold dealers for GM because of fear of loss of them after any switch of franchise.)

In 1960 GM made 16% on sales before taxes. Dealers' income before taxes was 1/2%. But this 1/2% included not only the 24% markup on cars and 35% on parts, but other side incomes. It is clear that the dealer must rely on the side incomes in order to recover the cost of the new car. It is also clear that the greater the side incomes, the more the new car can and will be sold below the dealer's cost of sales.

Thus GM removes for itself the "uncertainty of uncertainties" that must prevail in the free market place. This explains how GM with certainty could raise the price of the 1957 model Chevrolet 6.1% right after Ford had announced only a 2.9% raise based on

Ford's increased costs. But Ford waited only a week and raised its prices to within \$1 of Chevrolet's, on practically every model. Competitive manufacturers are helpless. They, like Ford, can only be thankful for a GM price raise that permits their continued marginal survival.

In a free market place, "competitive uncertainties" always prevail for all participants. "Competitive uncertainties" are essential for the spontaneity and flexibility that enable the market to produce great output with efficiency.

However, any immunity furnished by any scheme of market control for any participant removes the "uncertainties" and destroys the benefits of a free market place, and ultimately forces other participants not so privileged to become marginal operators, or even casualties. This is a true picture of the condition of the present auto industry.

"Competitive uncertainties" in the auto market have been removed for GM through GM's dominance of the automobile industry's merchandising pattern, set by GM over the years.

This is the essence of GM's "dominance" in the automobile industry. It has a monopoly over the country's dealer outlets. It has built it and sustained it through the use of its finance and insurance subsidiaries. The public has footed the bill in paying the \$200 million subsidy that makes all of this possible.

General Motors packs into its product prices an annual subsidy as high as \$200 million for the benefits of its finance subsidiary, GMAC. Since General Motors sets motor car prices

for the industry it can easily obscure the cost of this subsidy in the price of its products. This cost, paid by consumers, amounts to up to \$2 for \$100 for every product sold by GM - cars, ranges, diesel engines, ball bearings, etc.

The workings of these and other subsidies, along with other documentation of facts, are detailed in "A 'White Paper' on Automobile Financing," published by the American Finance Conference and filed herewith.

GM's power over dealers by controlling finance and insurance is why Ford is imitating GM in securing its insurance and finance subsidiary.

Ford Motor summed up the situation aptly before the U.S. Courts when it described GM's advantages. After several unsuccessful earlier attempts to modify its consent decree, which prohibited a finance subsidiary for Ford, Ford in another attempt in 1946 stated before the U.S. District Court:

"Respondent feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of the products, and it feels that its inability to do this in the past, has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this respondent to all cars sold by all manufacturers. Respondent is, therefore, confronted with the necessity of taking some steps to overcome this competitive disadvantage."

Ford's loss of sales referred to above could have been - and were - gained only by the then exclusive owner of a finance and insurance subsidiary, General Motors. All other manufacturers similarly lost sales to General Motors, for the same reason. Ford, then, was saying in effect to the Federal Court:

(1) An automobile manufacturer with a finance and insurance subsidiary has an unnatural advantage over a manufacturer without a finance and insurance subsidiary.

General Motors should be compelled to divest itself from its exclusively entrenched finance and insurance subsidiaries.

GMAC and GEIC would then extend their facilities and services to all dealers and all manufacturers. Even more importantly, GM dealers could change to non-GM franchises and continue to obtain the services of GMAC, or any others they freely choose, without risking the loss of delayed incomes in custody of GM.

Other manufacturers would thereby be strengthened. The competitive uncertainties of a free market place would be restored as these services, along with those of other independents, would be spread with equality for the benefit of the whole automotive industry.

GM and GMAC obtained a consent decree in settlement of a civil divestiture suit in 1952, during the transition of one administration to another. The decree, which stopped short of divorcement, amounted to a charter for GM to march to new heights of dominance over the auto market.

The Department of Justice in the intervening years has taken the position that the consent decree makes the issue of GMAC divestiture "res adjudicata," not subject to re-opening. This situation results in exempting GM, but not necessarily other manufacturers, from the effects and spirit of the antitrust laws. Legislation of the kind proposed in H.R. 71 is therefore needed.

This bill, introduced by Rep. Emanuel Celler, chairman of the House Judiciary Committee, would accomplish the goal of bringing great competitive equality and freedom of the market place to the automobile industry.

(The documents referred to at p. 57 follow:)

INSTALLMENT SALES FINANCE.  
*Dubuque, Iowa, September 6, 1957.*

MR. HERBERT BROWNELL, JR.,  
*Attorney General of the United States,  
Department of Justice, Washington, D.C.*

DEAR MR. BROWNELL: For some time it has been the desire of some of the independent finance executives to confer with you relative to the tremendous growth of GMAC since the entry of the consent decree in 1952. This situation is becoming more critical as the period of tight money progresses, and this monopolistic giant continues to make its own rules for securing his funds and handling his dealer sources of business.

I am sure that you are aware that some of the attorneys dealing with this problem have been having conferences with Judge Hansen and others of the Antitrust Division regarding the legal aspects of the situation.

It is highly desirable from every standpoint to ask you to name a time when a small group of the responsible independent finance company executives can visit with you about this problem. Some of it was aired in a committee hearing a year and a half ago under Senator O'Mahoney, but the men who want to visit with you are sure that much more can be done through proper application of the legal processes available than through a political tomahawk party, with all of its attendant headlines and distasteful connotations. We sincerely feel that this is a matter for application of the existing statutes to a situation that is clearly in point, and we want to visit with you about it before the situation erupts in some other direction.

I remember visiting with you briefly about this on one or two occasions, but it has never seemed so essential to have a conference as now. Would you please advise if it is possible for you to confere with four or five of our officers and committee members of the American Finance Conference in regard to this matter?

With my very best personal regards, I am,

Yours very truly,

DAVID B. CASSAT, *President.*

INSTALLMENT SALES FINANCE.  
*Dubuque, Iowa, December 20, 1957.*

Judge VICTOR R. HANSEN,  
*Assistant Attorney General,  
Antitrust Division, Department of Justice, Washington, D.C.*

DEAR MR. HANSEN: We had a very pleasant conference with you on October 2 relative to the GMAC-GM consent decree and the possibility of reopening this to prevent a complete monopoly in the automobile finance business.

Shortly after that the Attorney General resigned to return to private practice, and we presume there was considerable dislocation of matters that were in process. Nevertheless, we would like to pursue this matter further and would like to hear from you as to what study is being made, and in what ways we can be of assistance.

Yours very truly,

DAVID B. CASSAT, *President.*

JANUARY 8, 1958.

Mr. DAVID B. CASSAT,  
*President, Interstate Finance Corp.,  
Dubuque, Iowa.*

DEAR MR. CASSAT: This is in reply to your letter of December 20, 1957, with reference to our conference of October 9, 1957, relating to the consent decree involving the General Motors Acceptance Corp.

We have given a considerable amount of attention in the Antitrust Division to the question of reopening this decree to provide more adequate relief to independent automobile finance companies. We have also given a great deal of consideration to a new proceeding in the automobile finance business. We have concluded, however, on the basis of all of the information which we presently have, that neither of these alternatives appears to be practicable at the present time. While this situation may change pending additional developments in

the automobile finance business, this is the best answer I can give you at the moment.

With respect to your inquiry as to the ways you may be of assistance to us in addition to the considerable amount of help you have already given us, I suggest that you forward any information any of your members may have concerning coercion by General Motors of any of its dealers to take General Motors financing. In order to be useful in an antitrust enforcement proceeding, it would be necessary that any of these instances be supported by testimony of the dealer involved.

I would like to assure you of the continuing interest of the Antitrust Division in the competitive situation in the automobile finance industry. We shall continue to do everything we can to preserve competition in this industry within the limits of existing antitrust legislation.

Sincerely yours,

VICTOR R. HANSEN,  
*Assistant Attorney General, Antitrust Division.*

IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION

*Civil No. 2177*

UNITED STATES OF AMERICA, PLAINTIFF, *v.* GENERAL MOTORS CORPORATION,  
GENERAL MOTORS ACCEPTANCE CORPORATION, AND GENERAL MOTORS SALES  
CORPORATION, DEFENDANTS

FINAL JUDGMENT

The plaintiff, United States of America, having filed its amended complaint herein on June 21, 1941, and the same having been amended pursuant to stipulation filed and order entered April 15, 1942; the defendant, General Motors Sales Corp., having been dismissed pursuant to stipulation on June 17, 1952; the defendants, General Motors Corp. and General Motors Acceptance Corp., having appeared and filed their consolidated answer to the amended complaint as amended and asserted the truth of their answer and their innocence of any violation of law; the plaintiff and defendant desiring to avoid the expenses of a trial of the issues and the loss of time occasioned thereby; no testimony having been taken, each of the defendants having, by their respective attorneys, consented to this judgment without any findings of fact upon the condition that neither such consent nor this judgment shall be an admission or adjudication that the defendants have violated any statute; and the United States of America by its counsel having consented to the entry of this judgment and to each and every provision thereof, it is hereby ordered, adjudged, and decreed:

I

This Court has jurisdiction of the subject matter herein and all parties hereto and the complaint herein states a cause of action against the defendants General Motors Corporation and General Motors Acceptance Corporation, under the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", and acts amendatory thereof and supplemental thereto.

II

General Motors Corporation and General Motors Acceptance Corporation and their respective officers, directors, agents, employees, successors, subsidiaries, assigns and divisions be and they are hereby enjoined from doing the acts hereby prohibited and ordered to do the acts hereby directed.

III

The following terms as used herein shall have the following meanings:

- (a) "Person" shall mean a person, firm, corporation or association.
- (b) "Dealer" shall mean a person who holds a franchise from, or approved by General Motors Corporation, that provides for the purchase at wholesale of new passenger automobiles made by General Motors Corporation, and who resells the automobiles at retail.
- (c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new passenger automobiles ordered by the dealer at wholesale.
- (d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.
- (e) "Finance charge" shall mean the difference between the retail cash delivered price of a passenger automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.
- (f) "Finance company" shall mean a person engaged in wholesale financing or retail financing or both.
- (g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obliga-



tion to pay the whole or any part of the price of passenger automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include defendant finance company.

(i) "Institutional advertising" shall mean advertising by the manufacturer as distinguished from advertising by any subsidiary or division.

#### IV

(a) General Motors Corporation shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by General Motors Corporation to any dealer upon written specific or continuing authority of the dealer to the extent and under the circumstances hereinafter set forth:

(b) If General Motors Corporation assigns to General Motors Acceptance Corporation or to any other finance company any document of title or lien in respect of such automobiles it shall not refuse upon written request of any finance company to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions; provided, however, that the procedure in effect since January 1948, as amended, providing for payment of wholesale shipments by finance companies engaged in the wholesale financing of such automobiles, a copy of which is attached hereto, or any other procedure approved by the Court after sixty (60) days notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result shall be deemed to constitute compliance with this paragraph;

(c) To the extent, if any, that General Motors Corporation furnishes General Motors Acceptance Corporation or any other finance company space for maintaining an office in any manufacturing or assembly plant of General Motors Corporation, it shall not refuse upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities pursuant to the procedure referred to in paragraph IV(b), supra, to dealers operating under franchises of General Motors Corporation, to furnish it space for maintaining an office in such plant;

(d) If General Motors Corporation adopts a practice, procedure, or plan of furnishing to General Motors Acceptance Corporation or any other finance company the identity of, or other information concerning, new or prospective dealers, it shall not knowingly refuse to furnish that information upon specific or continuing request to any other finance company whose territory includes the location of such dealers' or prospective dealers' place of business, provided that such continuing request shall be renewed in writing at the beginning of each calendar year and shall be lodged in the office of the zone manager having jurisdiction over the new or prospective dealer; and provided that General Motors shall not adopt any procedure, practice, or plan of furnishing to General Motors Acceptance Corporation or any other finance company any information concerning dealers for the purpose of enabling General Motors Acceptance Corporation or other finance company to obtain the dealer's finance business;

(e) General Motors Corporation shall not, for the purpose of influencing a dealer to patronize General Motors Acceptance Corporation or any other finance company, adopt any practice, procedure, or plan for giving or making available or denying or threatening to deny any dealer any service or facility or for discriminating among its dealers in any other manner;

(f) General Motors Corporation shall not enter into any contract or agreement with any dealer which provides that the dealer shall patronize only General Motors Acceptance Corporation or any other finance company selected by General Motors Corporation, or which requires the dealer to observe any General Motors Acceptance Corporation plan or rate of financing the purchase and sale of automobiles;

(g) General Motors Corporation shall not cancel or terminate any contract, franchise, or agreement with any dealer or threaten to do so because of failure of such dealer to patronize General Motors Acceptance Corporation or any other finance company;

(h) The manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with General Motors Acceptance Corporation that an agent of the manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize General Motors Acceptance Corporation provided, however, that it shall not

be a violation of this decree for the manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them:

(i) General Motors Corporation shall not, for the purpose of influencing a dealer to patronize General Motors Acceptance Corporation or any other finance company or group of finance companies, use any information obtained from any dealer, his agent, representative, servant or employee, either directly by examination or inspection of his books or records or through financial, operating, or other statement or report or otherwise, nor shall it require for such purpose the disclosure of any such information. Nothing in this decree contained shall apply to the disclosure of any information at the dealer's request and for the purpose of assisting the dealer to obtain wholesale or retail financing or special facilities or services from General Motors Acceptance Corporation or any other finance company.

# V

The manufacturer shall not recommend, endorse or advertise the General Motors Acceptance Corporation or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the manufacturer in good faith:

(a) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by General Motors Corporation or from time to time withdrawing or modifying the same.

(b) From recommending to its dealers the use of such plans.

(c) From advertising to the public and recommending the use of such plans.

(d) From including mention of any wholly owned finance company in its institutional advertising.

(e) From advertising General Motors Acceptance Corporation or any other finance company in connection with sales made by factory owned retail stores.

# VI

General Motors Acceptance Corporation:

(a) Shall not represent in any manner to any dealer that General Motors Corporation requires him to patronize General Motors Acceptance Corporation.

(b) Shall not represent to any dealer that his failure to use General Motors Acceptance Corporation will result in the cancellation or termination by General Motors Corporation of his contract, franchise, or agreement.

(c) Shall not represent to any dealer that his failure to use General Motors Acceptance Corporation will result in the loss of any advantage, service or facility furnished by General Motors Corporation or that General Motors Acceptance Corporation can obtain from General Motors Corporation any facility, service, or privilege which is not available to any other finance company.

(d) Shall not enter into any contract, agreement or understanding with any dealer in connection with wholesale financing which requires the dealer to deal with General Motors Acceptance Corporation in respect of retail financing of automobiles.

(e) Shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with the manufacturer that an agent of the manufacturer and an agent of General Motors Acceptance Corporation shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize General Motors Acceptance Corporation; provided, however, that it shall not be a violation of this decree for General Motors Acceptance Corporation by joint conference with the dealer or prospective dealer and a representative of the manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with General Motors Acceptance Corporation on an exclusive basis for such reasonable period of time as may be agreed between them.

## VII

Nothing in this judgment shall be construed as an adjudication of the legality of or affect any right or privilege which General Motors Acceptance Corporation may have to enter into, any contract with any dealer to whom General Motors Acceptance Corporation has made a loan (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) which provides that the dealer will do business with General Motors Acceptance Corporation on an exclusive basis.

## VIII

The defendants shall not in combination or conspiracy do any acts which this judgment forbids or omit any act which this judgment requires.

## IX

Except as otherwise expressly provided in this decree, nothing in this decree shall deprive the manufacturer of any right or rights it may have under existing law.

## X

General Motors Corporation shall mail a copy hereof to its dealers, regional, zone, city and district managers and field representatives in the continental United States and defendant finance company shall mail a copy hereof to its regional, branch, district and territorial managers in the continental United States; and the manufacturer and the defendant finance company respectively shall before the effective date of this judgment file with this Court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

## XI

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment or for the modification or termination of any of the provisions thereof or for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

## XII

For the purpose of securing compliance with this judgment and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or an Assistant Attorney General and on notice reasonable as to time and subject matter to the defendant made to its principal office, and subject to any legally recognized privilege be permitted:

(a) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant related to any matters contained in this judgment;

(b) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section XII shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

## XIII

This decree shall go into effect one hundred and twenty (120) days after the date of entry hereof.

(S) WALTER J. LABUY,  
*United States District Judge.*

Dated: July 28, 1952.

We hereby consent to the entry of the foregoing final judgment:

For plaintiff:

(S) HOLMES BALDRIDGE,  
*Assistant Attorney General.*

(S) NEWELL A. CLAPP,  
*Acting Assistant Attorney General.*

For Defendants:

(S) HENRY M. HOGAN.

(S) FERRIS HURD.

**Civil Action No. 2177**

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**In the District Court of the United States for  
the Northern District of Illinois, Eastern  
Division**

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**UNITED STATES OF AMERICA, PLAINTIFF**

**v.**

**GENERAL MOTORS CORPORATION, ET AL., DEFENDANTS**

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**AMENDED COMPLAINT**

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**HOLMES BALDRIDGE,  
EDMOND J. FORD,**

*Special Assistants to the Attorney General.*

**THURMAN ARNOLD,**  
*Assistant Attorney General.*

**J. ALBERT WOLL,**  
*United States Attorney.*

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**FILED JUNE 21, 1941**



**In the District Court of the United States for  
the Northern District of Illinois, Eastern  
Division**

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**Civil Action No. 2177**

**UNITED STATES OF AMERICA, PLAINTIFF**

*v.*

**GENERAL MOTORS CORPORATION**

**GENERAL MOTORS ACCEPTANCE CORPORATION**

**GENERAL MOTORS SALES CORPORATION**

**DEFENDANTS**

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**AMENDED COMPLAINT**

*To the Honorable the Judge of the District Court of  
the United States for the Northern District of  
Illinois, Eastern Division:*

Whereas the complaint herein was filed on the 4th day of October 1940, and no responsive pleading thereto has been filed or served, the United States of America, by J. Albert Woll, United States Attorney for the Northern District of Illinois, Eastern Division, acting under the direction of the Attorney General of the United States and pursuant to the provisions of Rule 15 (a) of the rules of Civil Procedure for the District Courts of the United States, files this amended complaint against General Motors Corporation, a corporation organized and duly authorized to do business under the laws of the State of Delaware; General Motors Acceptance

Corporation, a corporation organized and duly authorized to do business under the laws of the State of New York; and General Motors Sales Corporation, a corporation organized and duly authorized to do business under the laws of the State of Delaware; and complains and alleges upon information and belief as follows:

#### DESCRIPTION OF DEFENDANTS

1. That defendant, General Motors Corporation, is engaged in the manufacture and sale of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle, and Cadillac automobiles, and of parts and accessories for these six makes of automobiles, throughout the United States; that said defendant manufactures and sells approximately 40% of all the new automobiles and trucks manufactured and sold in the United States; that General Motors Corporation is not only a manufacturing corporation but also a holding company, owning and controlling 100% of the capital stock of defendant, General Motors Sales Corporation, a corporation engaged in the sale of General Motors cars to dealers located in all the states of the United States including the District of Columbia; that it owns 100% of the stock of defendant General Motors Acceptance Corporation; that certain directors of General Motors Corporation are also directors of General Motors Acceptance Corporation;

2. That defendant, General Motors Acceptance Corporation, is 100% owned and wholly controlled by defendant, General Motors Corporation; that defendant, General Motors Acceptance Corporation is engaged in the business of financing at both wholesale and retail the sales to General Motors dealers and to retail pur-

chasers of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles manufactured by defendant, General Motors Corporation;

**METHOD OF SELLING GENERAL MOTORS AUTOMOBILES**

3. That defendant, General Motors Corporation, sells its cars to approximately 15,000 General Motors dealers located in all the states of the United States and the District of Columbia, through the defendant, General Motors Sales Corporation, the selling agency of General Motors Corporation for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles; that these 15,000 General Motors dealers enter into contracts with defendant, General Motors Sales Corporation; that these contracts run for a period of one year and are cancellable by General Motors Sales Corporation on short notice and without cause; that these contracts state specifically that under no circumstances is the dealer to be considered either the agent or legal representative of General Motors Sales Corporation;

4. That defendant, General Motors Sales Corporation, was organized on December 1, 1936; that prior to the organization of General Motors Sales Corporation, the sales of Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars were made to General Motors dealers located throughout the United States through five separate sales agencies, one for Chevrolet, one for Pontiac, one for Oldsmobile, one for Buick and one for LaSalle and Cadillac cars;

5. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars demanded by defendants, General Motors Corporation and General Motors Sales Corporation, and because



said corporations have required payment to be made in cash before transportation, shipment, and delivery of General Motors cars to General Motors dealers, and because it has been necessary for the great majority of dealers to procure a stock of General Motors cars varying in color, body style, and otherwise far beyond their financial ability to pay for on a cash basis as required by said corporations, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay said corporations for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac cars transported, shipped and delivered to General Motors dealers in pursuance of the contracts mentioned in paragraph three above;

6. That many companies, including defendant, General Motors Acceptance Corporation, called automobile finance companies, have been organized and have engaged in the business of furnishing money to General Motors dealers, for the purchase of General Motors cars and of used cars of any and all makes taken in trade;

7. That because of the high unit prices for Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles demanded in retail transactions, and because defendants, General Motors Corporation and General Motors Sales Corporation, have required payment to be made on a cash basis before transportation, shipment and delivery of said cars, and because it has been necessary for all or almost all of the dealers to procure the full purchase price of the automobile sold at the time of each retail transaction, and because the great majority of retail purchasers of automobiles have not had the financial ability to pay for the cars on a cash basis and

have desired to purchase and have purchased said cars on time, a large supply of money has been regularly and continuously necessary and has been regularly and continuously furnished and used to pay the dealers for the automobiles purchased at retail;

8. That defendant, General Motors Acceptance Corporation, and numerous other corporations known as independent automobile finance companies doing business in all the states of the United States and the District of Columbia have regularly and continuously furnished money both to General Motors dealers for the wholesale purchase of General Motors cars and to retail purchasers of General Motors cars;

9. That in most instances in the sale of new cars at retail, a used car is traded in by the purchaser as a part of the purchase price of the new car and General Motors dealers have sold these used cars to retail purchasers; that used cars are taken in trade on the sale of these used cars so that for every new car sold by a General Motors dealer approximately  $2\frac{1}{2}$  used cars are also sold by him; that until these  $2\frac{1}{2}$  used cars are sold, the dealer is unable to determine whether he has made a profit on the new car; that a large proportion of these used cars have been and are sold on time to retail purchasers, and large sums of money are regularly and continuously necessary to finance such transactions; that such sums of money have been furnished by defendant, General Motors Acceptance Corporation, and by numerous corporations known as independent automobile finance companies doing business in all the states of the United States and in the District of Columbia;

10. That as a part of the arrangement under which General Motors dealers purchase General Motors cars through defendant, General Motors Sales Corporation, defendants require each dealer to give a blanket power of attorney; that this power of attorney is filled in by a person designated by the factory when General Motors cars are shipped to the dealer;

11. That title to all General Motors cars sold to General Motors dealers passes from defendant, General Motors Corporation, through defendant, General Motors Sales Corporation, directly to defendant, General Motors Acceptance Corporation; that cars are shipped to dealers either on a trust receipt made out in favor of defendant, General Motors Acceptance Corporation, or on sight draft attached to the bill of lading made payable to defendant, General Motors Acceptance Corporation;

12. That under this arrangement it is impossible for a dealer purchasing new General Motors cars at wholesale on a time sales basis to finance said cars directly at the factory through any company other than defendant, General Motors Acceptance Corporation; that in the event a dealer wishes to finance at wholesale through an independent finance company, it is necessary that the independent finance company which desires title as security to secure title of the car from defendant, General Motors Acceptance Corporation; that independent finance companies which advance money to dealers for the purchase of cars from the factory, have no security for such advances during the time in which the car is in transit from the factory to the dealers' places of business;

13. That dealers who finance their cars at wholesale through defendant, General Motors Acceptance Corporation, receive possession and custody, but not title and ownership; that title and ownership do not pass to the dealer until defendant, General Motors Acceptance Corporation, has been paid the full contract price of the car plus insurance and other charges;

14. That a retail purchaser of a General Motors car on a time sales basis signs a conditional sales contract with the dealer; that the dealer sells this conditional sales contract either to defendant, General Motors Acceptance Corporation, or to an independent finance company; that in the event it is sold to defendant, General Motors Acceptance Corporation, it is sold on condition that the dealer repurchase the contract from defendant, General Motors Acceptance Corporation, in the event the car is repossessed from the retail purchaser for nonpayment of the installment contract; that the dealer is directly responsible for losses occasioned by repossession; that dealers selling retail time sales paper to independent finance companies sell the same without recourse, so that the independent finance company and not the dealer bears the risk of default in case of repossession of the car;

15. That defendant, General Motors Corporation, through the defendant, General Motors Sales Corporation, requires General Motors dealers to put into operation a bookkeeping system which indicates, among other things, the number of new and used cars sold each month, the number sold on a time sales basis, and the number of contracts sold to defendant, General Motors

Acceptance Corporation, and to other discount companies; that defendant, General Motors Corporation, through representatives of defendant, General Motors Sales Corporation, requires 10-day and 30-day reports from dealers indicating these matters as well as the general financial condition of the dealer; that defendant, General Motors Corporation, through representatives of the defendant, General Motors Sales Corporation, regularly inspects the books and records of General Motors dealers; that information so obtained is made available to defendants, General Motors Corporation and General Motors Acceptance Corporation.

#### JURISDICTION AND VENUE

16. That this complaint is filed and the jurisdiction of this Court is invoked to obtain equitable relief against defendants, General Motors Corporation, General Motors Sales Corporation, and General Motors Acceptance Corporation, because of their violations, jointly and severally, as hereinafter alleged, of Section 1 of the Sherman Act and Sections 2 and 7 of the Clayton Act:

17. That the unlawful combination and conspiracy, hereinafter described, to restrain trade and commerce among the several states of the United States, have been carried on in part within the Northern District of Illinois, Eastern Division, and many of the unlawful acts pursuant thereto have been performed by defendants and their representatives in said districts; that the interstate trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles,

as hereinafter described, is carried on, in part, within said district; that said defendants have usual places of business in the said district and there transact business and are within the jurisdiction of the court for the purpose of service;

# INTERSTATE COMMERCE

18. That General Motors automobiles manufactured by defendant, General Motors Corporation, have been and are manufactured at plants located in the states of Michigan, Wisconsin, Missouri, Georgia, New York, New Jersey and California; that these cars are shipped to General Motors dealers located in all of the 48 states and within the District of Columbia, pursuant to the selling contracts between such dealers and defendant, General Motors Sales Corporation, described in paragraph 3 above; that title to the cars passes from defendant, General Motors Corporation, through defendant, General Motors Sales Corporation, to defendant, General Motors Acceptance Corporation, at the factory; that title remains in defendant, General Motors Acceptance Corporation, until the dealer has received the car and paid the purchase price in full whether in a cash or a time transaction; that defendant, General Motors Corporation, the manufacturer, defendant, General Motors Sales Corporation, the selling agent, defendant, General Motors Acceptance Corporation, and the General Motors dealers are all engaged in interstate commerce;

19. That approximately 65% of all new General Motors automobiles sold to General Motors dealers at

wholesale, and approximately 75% of all new General Motors automobiles sold at retail, are sold on a time sales basis; that any undue interference with the financing of General Motors automobiles either at wholesale or at retail would substantially impede the free flow of General Motors automobiles in interstate commerce;

#### OFFENSES CHARGED

20. That defendants, each well knowing all the matters and things hereinbefore alleged, for many years past have violated and are now violating the provisions of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," 26 Stat. 209, 15 U. S. C. A. 1, commonly known as the Sherman Anti-trust Act, by conspiring to restrain the trade and commerce among the several states in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and have conspired to do all acts and things and to use all means necessary and appropriate to make said restraint effective, including the means, acts and things hereinafter more particularly alleged; and have conspired together to violate Sections 2 (a), (b), (c), (d), (e), (f), 3 and 7 of the Act of Congress of October 15, 1914, 38 Stat. 730, 15 U. S. C. A. 13 (a), (c), (d), (e), (f), 14-18, commonly known as the Clayton Act, by paying or granting rebates to General Motors dealers in return for their use of the financing facilities of defendant, General Motors Acceptance Corporation, and inducing the use of the same; and defendant, General Motors Corporation, with the participation of the other defendants has acquired the whole and a part of the

stock and other share capital of defendant, General Motors Acceptance Corporation, while said corporations were engaged in interstate commerce; and while defendant, General Motors Corporation, held said stock and other share capital and a part thereof it acquired the stock and other share capital and a part thereof in another corporation also engaged in said interstate commerce under conditions forbidden by and in violation of Section 7 of the Clayton Act aforesaid;

21. That one of the purposes of the conspiracy was to procure, monopolize and keep within the control of the defendants to the greatest extent possible, and to the exclusion of all other persons and corporations, the business of financing at wholesale and retail the trade and commerce in Chevrolet, Pontiac, Oldsmobile, Buick, LaSalle and Cadillac automobiles, and in used cars of any and all makes sold and handled by General Motors dealers; that as a part of said conspiracy, the defendants have arranged and agreed among themselves to do and have done the following things:

(a) To require dealers to promise and agree to deal with defendant, General Motors Acceptance Corporation, for financing the purchases and sales of automobiles, as a condition to entering into contracts for the sale, transportation and delivery of automobiles to dealers;

(b) To require dealers to promise and agree not to deal with any automobile finance company other than defendant, General Motors Acceptance Corporation, for financing the purchases and sales of General Motors automobiles, as a condition to entering into contracts for the sale,



transportation, and delivery of General Motors automobiles to dealers;

(c) To make all contracts for General Motors automobiles with General Motors dealers for a term of one year only, and to reserve therein the right to cancel and terminate the same, without cause and upon short notice, in order to exercise said right in cases where dealers shall fail and refuse to have purchases and sales of General Motors automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers shall have purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(d) To threaten, suggest and intimate to General Motors dealers that contracts for General Motors automobiles with them may and will be cancelled and terminated in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(e) To cancel and terminate contracts for automobiles with dealers in cases where the dealers fail and refuse to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, and in cases where dealers have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(f) To refuse and fail to furnish, transport and deliver automobiles to dealers who have refused and failed to have purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation:

(g) To refuse and fail to furnish, transport and deliver automobiles to General Motors dealers who have had purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(h) To examine and inspect the books, records and accounts of General Motors dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(i) To coerce and compel General Motors dealers to permit the defendants and their agents to examine and inspect the books, records, and accounts of said dealers for the purpose of procuring information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(j) To coerce and compel General Motors dealers to disclose, furnish, and report information relative to the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(k) To procure information from the servants and employees of General Motors dealers, relative to the financing of purchases and sales of

automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation, secretly, covertly, and without the knowledge of the dealers, and sometimes by means of bribery and otherwise;

(l) To require and demand of General Motors dealers that they explain and justify the financing of purchases and sales of automobiles by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(m) To coerce and compel General Motors dealers to refrain from having the purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, by any and all other means which may be deemed by the defendant to be necessary, appropriate, and effective to that end;

(n) To give, furnish, accord, and make available to General Motors dealers having purchases and sales of automobiles financed by defendant, General Motors Acceptance Corporation, services, facilities, privileges, favors, conveniences, and other preferential treatment, in and in connection with financing the purchase and sale, transportation, and delivery of automobiles, and to refuse the same to dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation;

(o) To delay the transportation, shipment, and delivery of automobiles to General Motors dealers having the purchases and sales of automobiles financed by automobile finance com-

panies other than defendant, General Motors Acceptance Corporation;

(p) To discriminate against General Motors dealers having purchases and sales of automobiles financed by automobile finance companies other than defendant, General Motors Acceptance Corporation, and in favor of dealers having such purchases and sales financed by defendant, General Motors Acceptance Corporation, with regard to the number, model, color, and style of automobiles transported and delivered to them, with regard to the time of transportation and delivery thereof, and with regard to the manner and form, and time and place of payment therefor;

(q) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, places, offices, and quarters in the plants, factories, offices, and quarters of defendants, General Motors Corporation, General Motors Sales Corporation, and of corporations affiliated with and controlled by them, for engaging in and acquiring the business of financing the purchase, sale, transportation, and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

(r) To give, furnish, accord, and make available to defendant, General Motors Acceptance Corporation, information relative to the purchase and sale, transportation and delivery of automobiles to dealers, including information relative to the description and identification of such automobiles, and to refuse the same to any other automobile finance company;

(s) To give, furnish, accord, and make available to defendant, General Motors Acceptance

Corporation, any and all contracts, instruments, and other writings, requested, necessary and appropriate for its security and protection in and in connection with financing the purchase and sale, transportation and delivery of automobiles to dealers, and to refuse the same to any other automobile finance company;

(t) To transfer directly to defendant, General Motors Acceptance Corporation, the title to General Motors automobiles before the transportation and delivery thereof to General Motors dealers for the protection and security of defendant, General Motors Acceptance Corporation, in and in connection with financing the purchase and sale, and transportation and delivery thereof, and to refuse the same to any other automobile finance company;

(u) To make and enforce discriminatory, onerous, and unreasonable requirements relative to the manner, form, and time of payment for automobiles, for application to all automobile finance companies except defendant, General Motors Acceptance Corporation, and to General Motors dealers having the purchase and sale of automobiles financed by such companies;

(v) To advertise, endorse, recommend and promote, and to coerce and require General Motors dealers to advertise, recommend and promote the use of the automobile financing services, plans and facilities of defendant, General Motors Acceptance Corporation;

(w) To coerce and require General Motors dealers not to advertise, recommend and promote the use of the automobile financing services, plans and facilities of any automobile

finance company other than defendant, General Motors Acceptance Corporation;

(x) To establish and fix a price or charge to be collected by defendant, General Motors Acceptance Corporation, from purchasers of Cadillac, LaSalle, Buick, Oldsmobile, Pontiac and Chevrolet automobiles, and of used automobiles of any and all makes handled by General Motors dealers, in all transactions financed by those corporations (said price or charge being known as the GMAC differential), and to pay to the dealer a substantial part thereof, as a rebate, participation and payment for diverting the business of financing such purchases to defendant, General Motors Acceptance Corporation, and away from other automobile finance companies;

(y) To regularly and continuously advertise and represent to purchasers of said automobiles that no such rebates, participations and payments have been and will be included in, and paid out of, such differential, and to induce, assist and require General Motors dealers to make, and join with and assist the defendants in making such representation;

(z) To regularly and continuously conceal, and induce, assist and require General Motors dealers to conceal, from purchasers of said automobiles, the fact that such rebates, participations and payments have been and will be included in and paid out of the GMAC differential;

21a. That said defendants were on the 27th day of May, 1937, in the Northern District of Indiana, South Bend Division, duly indicted as co-conspirators in the

aforesaid conspiracy, and were duly tried and convicted thereof; and on, to wit, the 17th day of November, 1939, judgment of guilty was duly entered with sentence thereon as by the record appears; and the plaintiff herein sets forth as a part of this complaint a true and certified copy of said judgment and sentence, making the same a part hereof. And the plaintiff alleges further that other deceitful and unlawful practices in and affecting interstate trade and commerce and restraining the same have been perpetrated by said defendants as a part of their association as aforesaid;

#### **EFFECTS OF CONSPIRACY**

22. That General Motors dealers have substantial investments of money, credit and property in their businesses of purchasing and selling General Motors cars, and said investments and businesses would be greatly reduced in value or destroyed by defendants in the event the aforesaid intimations, suggestions, threats, cancellations, and statements are not adhered to; that to prevent such destruction, loss and damage of and to their investments and businesses, all or almost all of the dealers, have complied with said intimations, suggestions, threats, and statements;

23. That General Motors dealers have been forced by coercion, discrimination and fraud to finance their purchases of General Motors automobiles at wholesale to defendant, General Motors Acceptance Corporation, and to sell their time sales paper on retail transactions to defendant, General Motors Acceptance Corporation, even though each and every General Motors dealer, by the express terms of his selling

agreement with defendant, General Motors Corporation, made through defendant, General Motors Sales Corporation, is not under any circumstances considered either the agent or legal representative of the seller;

24. That under the devices of the one year selling contract, blanket power of attorney, transfer of title on all cars direct from defendant, General Motors Corporation, through defendant, General Motors Sales Corporation, to defendant, General Motors Acceptance Corporation, and the close check on dealers permitted by the installation of the factory bookkeeping system, the defendants, General Motors Corporation and General Motors Sales Corporation, can and do ship cars to dealers at will, with or without order, ship parts and accessories with or without order, or withhold cars, parts and accessories ordered;

25. That as a result of the of the conspiracy herein alleged, defendant, General Motors Acceptance Corporation, in effect finances at wholesale all the General Motors cars purchased by General Motors dealers on time, and finances at retail approximately 75% of the new General Motors cars and approximately 54% of the used cars of any and all makes sold by General Motors dealers;

26. That the effect of the conspiracy herein alleged and the acts, practices and things done pursuant thereto, has been to burden, obstruct and unduly restrain the interstate trade and commerce in General Motors automobiles;

27. That great size and power have been concentrated in the control of defendant, General Motors



Corporation, and this has been used, in association with the other defendants unreasonably to restrain competition, to force terms and prices, to coerce, intimidate and discriminate, and thereby has unreasonably restrained interstate commerce and impeded its flow;

#### CONCLUSION

28. That the ownership of an automobile finance company by a company with as powerful a position as that of defendant, General Motors Corporation, controlling as it does over 15,000 dealers who are dependent upon the pleasure of the defendants, General Motors Corporation and General Motors Sales Corporation, for their livelihood and the preservation of their assets and franchises, with the vast majority of automobile sales in interstate commerce dependent upon the use of finance companies, acts as an unreasonable restraint on the use of finance companies other than defendant, General Motors Acceptance Corporation, and consequently upon the automobile sales which must be financed; that the ownership of defendant, General Motors Acceptance Corporation, by defendant, General Motors Corporation, in itself tends to give defendant, General Motors Corporation, a monopoly in the financing of General Motors cars and control of the financing charges thereof; that defendants, General Motors Corporation and General Motors Sales Corporation, in addition thereto have required agreements from dealers that they will use exclusively and to an amount designated, services of defendant, General Motors Acceptance Corporation, for the financing of the purchases and sales of General Motors cars and used cars of any and all makes sold by General Motors

dealers; that defendants, General Motors Corporation and General Motors Sales Corporation, have threatened and discriminated against those dealers and have terminated contracts of those dealers who did not use exclusively the credit facilities of defendant, General Motors Acceptance Corporation; that through the medium of the repayment to dealers of the so-called "reserves" collected, and other rebates, bonuses, and bribes by defendant, General Motors Acceptance Corporation, defendant, General Motors Corporation, has given secret rebates to dealers who use the credit facilities of defendant, General Motors Acceptance Corporation;

29. That complete ownership and control by defendant, General Motors Corporation, of defendant, General Motors Acceptance Corporation, is subject to abuses which would be impossible under independent ownership;

30. That the power of defendants, General Motors Corporation and General Motors Sales Corporation, flowing from the complete ownership and control of defendant, General Motors Acceptance Corporation, by defendant, General Motors Corporation, is such that it is subject to abuses which can be corrected only by a severance of that ownership and control; that an injunction is inadequate since, among other things, the mere fact of ownership constitutes a coercive influence on General Motors dealers purchasing and selling General Motors cars in interstate commerce.

#### PRAYER

WHEREFORE, the Complainant prays:

1. That a summons issue to each of the defendants commanding it to appear herein and to answer the

allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That upon final hearing of this cause, the Court order, adjudge, and decree that the conspiracy and wrongs herein described exist and constitute an unreasonable restraint of trade and commerce among the various states and that as a part thereof and incidental thereto General Motors Corporation wrongfully holds the stock and share capital of General Motors Acceptance Corporation and all parties thereof;

3. That a receiver be appointed upon such adjudication to receive forthwith all stock and share capital of General Motors Acceptance Corporation held and controlled by General Motors Corporation and that General Motors Corporation be thereupon ordered forthwith to transfer the aforesaid stock and share capital to the aforesaid receiver, that the aforesaid receiver upon receiving the aforesaid stock and share capital offer the same for sale and sell the same, holding the proceeds subject to the order of this Court;

4. That the complainant recover the costs and disbursements of this suit;

5. That the complainant shall have such other and further relief as the Court shall deem just and proper.

HOLMES BALDRIDGE,

EDMOND J. FORD,

*Special Assistants to the Attorney General.*

THURMAN ARNOLD,

*Assistant Attorney General.*

J. ALBERT WOLL,

*United States Attorney.*

# **District Court of the United States, Northern District, Indiana, South Bend Division**

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No. 1039, Criminal Indictment in One Count for  
Violation of U. S. C., Title 15, Sec. 1

UNITED STATES

*v.*

GENERAL MOTORS CORPORATION, ET AL.

---

## **GENERAL MOTORS ACCEPTANCE CORPORATION, JUDGMENT AND COMMITMENT**

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Acceptance Corporation, appearing in proper person, and by counsel and,

The defendant having been convicted on Finding of guilty by jury of the offense charged in the indictment, in the above-entitled cause, to wit:

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A. One count of indictment, Violation of Sherman Anti-Trust Law, sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

ORDERED AND ADJUDGED That the defendant, having been found guilty of said offenses, is hereby

fined in the sum of Five Thousand (\$5,000.00) Dollars, together with one-half of the costs in this action, laid out and expended, taxed at \$-----.

(Signed) WALTER C. LINDLEY, *Judge.*

A True Copy. Certified this 17th day of November, 1939.

(Signed) MARGARET LONG, *Clerk.*

By \_\_\_\_\_,  
*Deputy Clerk.*

# **District Court of the United States, Northern District, Indiana, South Bend Division**

---

No. 1039. Criminal Indictment in One Count for  
Violation of U. S. C., Title 15, Sec. 1

UNITED STATES

*v.*

GENERAL MOTORS CORPORATION, ET AL.

---

**GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA,  
INCORPORATED, JUDGMENT**

On this 17th day of November, 1939, came the United States Attorney and the defendant General Motors Acceptance Corp. of Ind., Incorporated, appearing in proper person, and by counsel and,

The defendant having been convicted on Finding of guilty by Jury of the offense charged in the indictment, in the above-entitled cause, to wit:

Sherman Anti-Trust Law, Section 1, Title 15,  
U. S. C. A. One count of indictment, Violation  
of Sherman Anti-Trust Law, sentenced on one  
count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby

Fined in the sum of Five Thousand (\$5,000.00) Dollars.

(Signed) WALTER C. LINDLEY, *Judge.*

A True Copy. Certified this 17th day of November, 1939.

(Signed) MARGARET LONG, *Clerk.*

By ——— ———,  
*Deputy Clerk.*

**District Court of the United States, Northern  
District, Indiana, South Bend Division**

---

No. 1039, Criminal Indictment in One Count for  
Violation of U. S. C., Title 15, Sec. 1

UNITED STATES

*v.*

GENERAL MOTORS CORPORATION, ET AL.

---

**GENERAL MOTORS SALES CORPORATION, JUDGMENT**

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Sales Corporation, appearing in proper person, and by counsel and,

The defendant having been convicted on finding of guilty by jury of the offense charged in the indictment in the above-entitled cause, to wit:

Sherman Anti-Trust Law, Section 1, Title 15,  
U. S. C. A. One count of indictment, Viola-  
tion of Sherman Anti-Trust Law, Sentenced on  
one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court



ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby

Fined in the sum of Five Thousand (\$5,000.00) Dollars.

(Signed) WALTER C. LINDLEY, *Judge*.

A True Copy. Certified this 17th day of November, 1939.

(Signed) MARGARET LONG, *Clerk*.

By ————, *Deputy Clerk*.

**District Court of the United States, Northern  
District, Indiana, South Bend Division**

---

No. 1039, Criminal Indictment in One Count for  
Violation of U. S. C., Title 15, Sec. 1

UNITED STATES

*v.*

GENERAL MOTORS CORPORATION, ET AL.

---

**GENERAL MOTORS CORPORATION, JUDGMENT**

On this 17th day of November, 1939, came the United States Attorney, and the defendant General Motors Corporation appearing in proper person, and by counsel and,

The defendant having been convicted on finding of guilty by jury of the offense charged in the indictment in the above-entitled cause, to wit:

Sherman Anti-Trust Law, Section 1, Title 15, U. S. C. A. One count of indictment, Violation of Sherman Anti-Trust Law, Sentenced on one count of indictment,

and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby

Fined in the sum of Five Thousand (\$5,000.00) Dollars, together with one-half of the costs in this action, laid out and expended, taxed at \$-----.

(Signed) WALTER C. LINDLEY, *Judge*.

A True Copy. Certified this 17th day of November, 1939.

(Signed) MARGARET LONG, *Clerk*.

By \_\_\_\_\_, *Deputy Clerk*.

UNITED STATES OF AMERICA,

*Northern District of Indiana, ss:*

I, Margaret Long, Clerk of the United States District Court in and for the Northern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment against Defendants:

General Motors Acceptance Corporation,  
General Motors Corporation,  
General Motors Sales Corporation,  
General Motors Acceptance Corporation of  
Indiana, Incorporated.

In the Case of *United States vs. General Motors Corporation et al.* Cause No. 1039 Criminal,

now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at South Bend, this 4th day of October, A. D. 1940.

[SEAL]

MARGARET LONG, *Clerk*.

By MARY SWEENEY, *Deputy Clerk*.

**In the District Court of the United States for  
the Northern District of Indiana**

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**CIVIL No. 8**

**UNITED STATES OF AMERICA, PETITIONER**

**v.**

**FORD MOTOR COMPANY, UNIVERSAL CREDIT CORPORATION, ET  
AL., RESPONDENTS**

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**FINAL DECREE**

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

Therefore, it is ordered, adjudged, and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and pro-

ceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

3. "Respondent Finance Company" as used in this decree shall include Universal Credit Corporation, Universal Credit Company (a Delaware corporation), Universal Credit Company (an Indiana corporation), Universal Credit Company, Inc., Commercial Investment Trust Corporation, and Commercial Investment Trust Incorporated and their officers, directors, agents, and employees. "Manufacturer" as used in this decree shall include Ford Motor Company and its officers, directors, agents, and employees.

4. The respondents, their officers, directors, agents, and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation, or association.

(b) "Dealer" shall mean a person who holds a franchise from, or approved by, the Manufacturer; that provides for the purchase at wholesale of new automobiles made by the Manufacturer; and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note, or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in subparagraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Chrysler Corporation" means Chrysler Corporation, a corporation of the State of Delaware, and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware, and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York, and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

## **6. The Manufacturer:**

(a) Shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer;

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company, or any other finance company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company, or any other finance company, space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company, or any other finance company, the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon

specific or continuing request as to identity and specific but noncontinuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraphs (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure, or plan for the retail or wholesale financing of automobiles for the purpose of enabling Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility, or privilege extended by the Manufacturer pursuant to such practice, procedure, or plan, if such service, facility, or privilege, or a service, facility, or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility, or privilege not otherwise specifically referred to in this decree to respondent Finance Company or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities, or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the



- patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility, or privilege only to registered finance companies as defined in subparagraph (j) of this paragraph 6 or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility, or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

(g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise, or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall

together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy thereof certified by the clerk shall have been served on the Manufacturer.

2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance

company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

To Ford Motor Company (hereinafter called the "Manufacturer"):

(A) This statement is made pursuant to subparagraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause entitled "*United States of America vs. Ford Motor Company, et al.*," dated November 15, 1938.

(B) The undersigned finance company, in acquiring retail time sales paper, arising from sales of automobiles, from dealers of the Manufacturer, wherever located, will conform to the following rules:

(1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

(2) The finance company will not require or accept assignments of wages or salaries, or garnish wages or salaries to collect deficiency judgments in respect of automobiles sold for less than \$1.000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to any other person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or re-writing a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent. of the delinquent installments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable amount for the time of its employees as collection or repossession expenses;

(6) The finance company will not require the dealer to take a chattel mortgage or other lien on

property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is, in any way, connected or affiliated with the Manufacturer, or that it has been approved, recommended, or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the good will of the Manufacturer or to the reputation of its products, or to the good will of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manufacturer information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established by the Manufacturer, approved by the Department of Justice of the United States and

incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other finance companies and interested parties and an opportunity for hearing to the persons so notified. .

(C) The area within which the finance company conducts its business is: (*insert either "the United States" or the names of specific states, counties or cities*), and notwithstanding the designation of an area, the finance company nevertheless will comply with clause (B) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

(D) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

(E) The address of the finance company's principal office is \_\_\_\_\_

\_\_\_\_\_ FINANCE COMPANY,  
By \_\_\_\_\_, *President*.

Attest:

\_\_\_\_\_, *Secretary*.

STATE OF \_\_\_\_\_,

*County of* \_\_\_\_\_, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, a notary public, \_\_\_\_\_, to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is \_\_\_\_\_ Presi-

'dent of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

-----, *Notary Public.*

STATE OF -----,

County of -----, ss:

-----, being duly sworn, deposes and says that he is an officer, to wit the ----- of -----, the finance company which executed the foregoing statement, and that said statement is in all respects true.

Signed and sworn to before me this ----- day of -----, 19-----.

-----, *Notary Public.*

(Appropriate changes to be made for finance companies which are not corporations.)

5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and serve upon the Manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service, or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in subdivision (11) of clause (B) of sub-paragraph (j) of this paragraph 6. The notice shall set forth the provisions of

the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer, or any registered finance company shall be entitled to make application to the court for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and justice may require (after such notice and hearing as the court may direct) suspending or revoking the registration of any registered company or dismissing the application. If the order shall provide that such finance company shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it upon such terms and conditions, if any, as the court may determine for the purpose of assuring further compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an



order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (D) thereof.

9. Service of all papers hereinbefore required to be made upon the manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Dearborn, Michigan.

10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not recommend, endorse, or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

(2) From recommending to its dealers the use of such plans;

(3) From advertising to the public and recommending the use of such plans.

1. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of mailing the notice, upon which the plan or modification shall go into effect.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

3. The adoption or modification of any plan under this sub-paragraph (k) shall not preclude any aggrieved finance company or any other aggrieved person who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sherman Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.

(l) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants, and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor

shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain whole-sale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

**7. The Respondent Finance Company:**

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do business with it the amount of all reserves standing to the credit of such dealer, less any off-setting indebtedness of such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

(d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government

against said corporations upon allegations substantially identical with the allegations in Paragraph 18 of Section III of the petition herein, then and in that event the court shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company, or any of them, with respect to the allegations of said paragraph of the petition, as justice may then require. Such proceeding shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with respect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree

in an original non-jury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing sub-paragraphs (*e*), (*f*), (*i*), and (*l*) of paragraph 6, or of sub-paragraph (*d*) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance Company shall mail a copy hereof to its zone, regional, and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company respectively shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Re-

spondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

**12a.** It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event, every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any



agreement, act or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1041;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree

to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of such court which, although subject to further review, continues effective, or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b)

•of paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer.

(4) The right of the respondents or any of them to make any application for suspension of any provision of this decree in accordance with the provisions of this paragraph and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of General Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, adjustments, allowances, or payments to or with all of its dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manu-

facturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of sub-paragraphs (j) and (k) of paragraph 6 hereof, and the October 1938 Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A) in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or

**Chrysler Corporation shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.**

**It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Respondent Finance Company other than General Motors Acceptance Corporation or Commercial Credit Company shall**

have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a competitive disadvantage in financing the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws or regulations, and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the October 1938 Term of this court is hereby extended indefinitely for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the

continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12 hereof, which said paragraphs shall take effect as therein provided.

THOS. W. SLICK, *District Judge.*

DATED: NOVEMBER 15, 1938.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,  
Complainant,

-vs-

FORD MOTOR COMPANY, COMMERCIAL INVESTMENT TRUST CORPORATION, COMMERCIAL INVESTMENT TRUST, INC., UNIVERSAL CREDIT CORPORATION, UNIVERSAL CREDIT COMPANY OF DELAWARE, UNIVERSAL CREDIT COMPANY OF INDIANA, AND UNIVERSAL CREDIT COMPANY, INC.,

Respondents.

Civil Action No. 8

ORDER MODIFYING FINAL DECREE  
OF NOVEMBER 15, 1938, AS AMENDED

At a session of said Court, held in the  
Federal Building, South Bend, Indiana,  
on the 19th day of January 1953.

PRESENT: Honorable Luther W. Swygert  
District Judge

This matter having come on to be heard on motion of complainant United States Government and motion of respondent Ford Motor Company, and the Court being fully advised in the premises and with the consent of counsel for the United States Government, of counsel for respondent Ford Motor Company, and of counsel for respondents Commercial Investment Trust Corporation, et al.,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The part of said motion of complainant to terminate the suspension of and to restore and be found to be restored to full force and effect the provisions of subparagraph (1) of paragraph 6, of the final decree dated November 15, 1938, as amended, be and the same hereby is granted, and said subparagraph (1) is hereby modified as hereinafter set forth.

2. The part of said motion of complainant to terminate the suspension of and to restore and be found to be restored to full force and effect the provisions of subparagraphs (e) and (k, of paragraph 6, of the final decree dated November 15, 1933, as amended, be and the same hereby is denied except as hereinafter set forth.

3. The Motion of respondent Ford Motor Company be and the same hereby is granted as follows:

4. The provisions of subparagraph (e) of paragraph 6 of said final decree herein be and the same are modified by inserting before the semicolon at the end thereof the following: "to the extent and under the circumstances hereinafter set forth".

5. The provisions of subparagraph (b) of paragraph 6 of said final decree herein be and the same hereby are modified by providing that at any time a procedure for payment of wholesale shipments by finance companies engaged in the wholesale financing of automobiles substantially similar to the procedure attached to the Final Judgment in United States of America vs. General Motors Corporation, General Motors Acceptance Corporation, and General Motors Sales Corporation, Civil No. 2177 in the District Court of the United States for the Northern District of Illinois, Eastern Division, reference to which is contained in paragraph IV(b) of said Final Judgment, or any modification thereof which may then be in effect, or any other procedure approved by this court after sixty days' notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result, shall be deemed to constitute compliance with this paragraph, thus making this subparagraph read as follows:

"So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by

the finance company upon substantially similar terms and conditions; provided, however, that at any time a procedure substantially similar to the procedure attached to the Final Judgment in United States of America vs. General Motors Corporation, General Motors Acceptance Corporation, and General Motors Sales Corporation, Civil No. 2177, in the District Court of the United States for the Northern District of Illinois, Eastern Division, reference to which is made in paragraph IV(b) of said Final Judgment, or any modification thereof which may then be in effect, or any other procedure approved by this court after sixty days' notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result, shall be deemed to constitute compliance with this paragraph."

6. The provisions of Subparagraph (c) of paragraph 6 of said final decree be and the same hereby are modified by striking the words "place of business" where they first occur, and inserting in lieu thereof the words "manufacturing or assembly plant", by striking the words "place of business" where they next occur and inserting in lieu thereof the word "plant", and by inserting before the semicolon at the end of said subparagraph the phrase "or only to finance companies which extend wholesale financing facilities pursuant to a procedure or plan adopted by Manufacturer under subparagraph (b) of this paragraph 6", thus making this subparagraph read as follows:

"(c) So long as the manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any manufacturing or assembly plant of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such plant; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in subparagraph (j) of this paragraph 6 or only to finance companies which extend wholesale financing facilities pursuant to a procedure or plan adopted by Manufacturer under subparagraph (b) of this paragraph 6;".

7. The provisions of subparagraph (d) of paragraph 6 of said final decree be and the same hereby are modified to read as follows:

"If the Manufacturer adopts a practice, procedure, or plan of furnishing to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business, provided that such continuing request shall be renewed in writing at the beginning of each calendar year, and shall be lodged in the office of the District Sales Manager or other designated representative of the Manufacturer having jurisdiction over the dealer or prospective dealer; and provided that it shall not be a violation of this decree for the Manufacturer to furnish such information only to registered finance companies as defined in subparagraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer."

8. The provisions of subparagraph (e) of paragraph 6 of said final decree be and the same hereby are stricken out and deleted.

9. The provisions of subparagraph (f) of paragraph 6 of said final decree be and the same hereby are modified by striking the words commencing in the first line thereof reading "give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner", and by striking the semicolon at the end of said subparagraph and inserting in lieu thereof a comma and adding after said comma the words "adopt and practice, procedure, or plan for giving or making available or denying or threatening to deny any dealer any service or facility, or for discriminating among its dealers in any other manner;", thus making this subparagraph read as follows:

"(f) The Manufacturer shall not, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies, adopt any practice, procedure, or plan for giving or making available or denying or threatening to deny any dealer any service or facility, or for discriminating among its dealers in any other manner;"

10. The provisions of subparagraph (c) of paragraph 6 of said final decree be and the same hereby are modified by striking the words "designated by the Manufacturer" at the end thereof, and inserting in lieu thereof the words "of any finance company owned or controlled by the Manufacturer", thus making this subparagraph read as follows:

"The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies; or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles of any finance company owned or controlled by the Manufacturer;"

11. The provisions of subparagraph (i) of paragraph 6 of said final decree be and the same hereby are modified by striking out the words "Respondent Finance Company or any other finance Company", and inserting in lieu thereof the words "any finance company owned or controlled by the Manufacturer", and by striking out the words "Respondent Finance Company or such other finance company", and inserting in lieu thereof the words "such finance company", thus making this subparagraph read as follows:

"(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with any finance company owned or controlled by the Manufacturer that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize such finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;"

12. The provisions of subparagraph (j) of paragraph 6 of said final decree be and the same hereby are modified by inserting in paragraph 4. (C) after "(B)" the following: "and (D)", by inserting in paragraph 4. a new paragraph (D) as set forth below, by changing the present paragraph heading (D) to (E) and the present paragraph heading (E) to (F), and by striking "(D)" from paragraph 8. and inserting in lieu thereof "(E)", thus making the modified paragraphs of subparagraph (j) read as follows:

6. (j) 4. "(C) The area within which the finance company conducts its business is: [insert either 'the United States' or the names of specific states, counties or cities], and notwithstanding the designation of an area, the finance company nevertheless will comply with clauses (B) and (D) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

"(D) Until the effective date of any withdrawal of this statement by the finance company in the manner provided by paragraph 1. of subparagraph (k), or in the manner provided by paragraph 5 or by paragraph 6 of subparagraph (j) of paragraph 6 of said decree, all retail time sales paper created after the effective date of any plan or plans or modification thereof and covering new automobiles made by the Manufacturer, acquired by the finance company from the Manufacturer's dealers (whether located in the area described in Clause (C) hereof or elsewhere), shall be acquired by it in accordance with the terms of any plan or plans of financing adopted by the Manufacturer as provided by said sub-paragraph (k) and then in effect; provided:

"a. The finance charges included in such retail paper may be less than the finance charges specified by such plan or plans or modification thereof, and the other terms of such paper may be more favorable to the retail purchaser than the terms so specified; and  
b. the finance company may acquire retail time sales paper covering new automobiles made by the Manufacturer in which the retail purchaser of the automobile is required to pay a finance charge in excess of the finance charge specified in the plan so adopted or modification thereof, but only if the finance company shall promptly credit such retail purchaser on the time purchase price of the automobile with the amount of the excess. The words 'finance charge' as used in this statement shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

"(E) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

"(F) The address of the finance company's principal office is . . . . .

. . . . . FINANCE COMPANY

By. . . . .  
President

ATTEST:

. . . . .  
Secretary"

6.(j) 8. "Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under Clause (E) thereof."

13. The provisions of subparagraph (k) of paragraph 6 of said final decree be and the same hereby are restored to full force and effect as modified in the manner following: by inserting a new paragraph (3), as set forth below, by changing the number on the present paragraph (3) to (4), by inserting new paragraphs numbered (5), (6), and (7), as set forth below, by modifying paragraph 1. as set forth below, and by striking paragraph 3., thus making this subparagraph (k) read as follows:

"(k) The Manufacturer shall not recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

"(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

"(2) From recommending to its dealers the use of such plans;

"(3) From advising its dealers that such plans are available through all registered finance companies which have indicated their

readiness to do business under the plan in such dealer's area or from advising the names of such companies;

"(4) From advertising to the public and recommending the use of such plans;

"(5) From advertising to the public that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in the area to which such advertisement is directed or from advertising the names of such companies;

"(6) From including mention of any finance company owned or controlled by Manufacturer in Manufacturer's institutional advertising;

"(7) From advertising any finance company owned or controlled by Manufacturer or any other finance company in connection with sales made by factory-owned retail stores.

"1. The Manufacturer shall notify each registered finance company, and any other finance company which makes written specific request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date upon which the plan or modification shall go into effect. The notice to each registered finance company shall be mailed not less than thirty days prior to the date upon which the plan or modification shall go into effect. Any registered finance company so notified may before the date upon which the plan or modification becomes effective file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said plan or modification, as the case may be, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

"2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree."

14. The provisions of paragraph 10 of said final decree

be and the same hereby are stricken out and deleted.



15. The provisions of the second paragraph of paragraph 12 of said final decree be and the same hereby are modified by inserting after the words "acquiring or retaining ownership of and/or control over or interest in any finance company," the words "or from making loans to such finance company," thus making this paragraph read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from making loans to such finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that

16. The last paragraph of the order of this Court made and dated herein on March 21, 1949, be and it hereby is modified by inserting after the words "finance company", where they first occur, the following:

"or from making loans to such finance company",

thus making said paragraph read as follows:

"ORDERED, ADJUDGED AND DECREED, that nothing contained in said consent decree shall preclude respondent, Ford Motor Company, from acquiring and retaining ownership of and/or control over or interest in any finance company, or from

making loans to such finance company, or from dealing with such finance company and with the dealers in the manner provided in said consent decree or in any order of modification or suspension thereof, including this order."

Dated: January 19, 1953.

/s/ Luther W. Swygert  
United States District Judge

The undersigned hereby consent to the entry of the foregoing Order and waive notice of hearing thereon.

/s/ William T. Gossett  
William T. Gossett

/s/ Charles J. Fellrath  
Charles J. Fellrath

Attorneys for Ford Motor Company

The undersigned hereby consent to the entry of the foregoing Order and waive notice of hearing thereon.

/s/ John Ford Beecher  
Special Assistant to  
the Attorney General

/s/ Newell A. Clapp  
Acting Assistant Attorney General

/s/ Victor H. Kramer  
Special Assistant to the  
Attorney General

/s/ Gilmore S. Haynie  
United States Attorney

/s/ James E. Keating  
Assistant United States Attorney

The undersigned hereby consent to and waive notice as to the entry of the foregoing Order, reserving, however, any rights they may have under the final decree of November 15, 1938, as modified, to make application for modification, suspension or vacating of any of its provisions.

/s/ Melbourne BERgerman  
Melbourne Bergerman

Attorney for Commercial  
Investment Trust Corporation,  
Commercial Investment Trust, Inc.,  
Universal Credit Corporation,  
Universal Credit Company of  
Delaware, Universal Credit  
Company of Indiana, and Universal  
Credit Company, Inc.

IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA,  
SOUTH BEND DIVISION

FILED  
MAR. 23, 1949  
AT . . . . . M.  
MARGARET LONG, Clerk  
U. S. DISTRICT COURT

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
Complainant,	:	
	:	
-against-	:	#8 Civil
	:	
FORD MOTOR COMPANY, COMMERCIAL INVESTMENT	:	Order on
TRUST CORPORATION, COMMERCIAL INVESTMENT	:	Mandate
TRUST, INC., UNIVERSAL CREDIT CORPORATION,	:	
UNIVERSAL CREDIT COMPANY OF DELAWARE,	:	
UNIVERSAL CREDIT COMPANY OF INDIANA, and	:	
UNIVERSAL CREDIT COMPANY, INC.,	:	
	:	
Respondents.	:	
-----X	:	

The above named respondent, Ford Motor Company, and the above named respondents, Commercial Investment Trust Corporation, Commercial Investment Trust, Inc., Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana and Universal Credit Company, Inc., respectively having appealed to the Supreme Court of the United States from the order of this Court entered herein July 25, 1946, modifying, upon complainant's motion, paragraph 12 of the consent decree entered in this cause on November 15, 1933, and denying the motions of said respondents for suspension of the provisions of subparagraphs (i) and (k) of paragraph 6 of said consent decree, and modification of the provisions of subparagraph (e) of paragraph 6 of said consent decree to the extent that said subparagraph (e) enjoins any of the acts prohibited by said subparagraphs (i) and (k) of paragraph 6, until such time as they shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, and suspension of the provisions of subparagraph (d) of paragraph 7 of said consent decree, until such time as they shall be imposed in substantially identical terms upon General Motors Acceptance Corporation

and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court which, although subject to further review, continue effective, and denying the motion of respondent, Ford Motor Company, that an order be entered pursuant to paragraph 12 of said consent decree that nothing therein shall preclude said respondent, Ford Motor Company, from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in said consent decree or in any order of modification or suspension thereof, and said appeals having duly come on to be heard before the Supreme Court of the United States on the transcripts of record and having been argued by counsel and the Supreme Court of the United States having issued its mandate herein, dated December 15, 1948, wherein it was ordered and adjudged that the said order of this Court be and the same thereby be reversed, and that the cause be and the same thereby be remanded to this Court for proceedings not inconsistent with the opinion of the Supreme Court of the United States dated November 15, 1948, and the said mandate having been filed in the office of the Clerk of this Court on December 20, 1948,

And the complainant having filed a motion in this Court on December 31, 1946, further to modify paragraph 12 of said consent decree, and this Court having entered an order herein, dated January 19, 1948, that argument on said motion be continued until after the Supreme Court of the United States should dispose of the complainant's prior motion of a similar nature on the aforesaid appeal of respondent, Ford Motor Company,

NOW, upon said appeals and all the papers and proceedings herein and upon said mandate, it is

ORDERED, ADJUDGED AND DECREED, that the mandate of the Supreme Court of the United States, dated December 15, 1948, and filed herein on December 20, 1948, be and the same hereby is made the order and decree of this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the said order of this Court entered herein on July 25, 1946, be and the same hereby is set aside; and it is further

ORDERED, ADJUDGED AND DECREED, that the said motions of complainant to modify paragraph 12 of the said consent decree entered herein on November 15, 1938, be and the same hereby are in all respects denied; and it is further

ORDERED, ADJUDGED AND DECREED, that the said motions of respondents be and the same hereby are in all respects granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the provisions of subparagraphs (i) and (k) of paragraph 6 of said consent decree be and the same hereby are suspended until they shall be imposed in substantially identical terms upon General Motors Corporation and its subsidiaries, and the provisions of subparagraph (d) of paragraph 7 of said consent decree be and the same hereby are suspended until they shall be imposed in substantially identical terms upon General Motors Acceptance Corporation and its subsidiaries, either (x) by consent decree, or (y) by final decree of a court of competent jurisdiction not subject to further review, or (z) by decree of such court, which, although subject to further review, continues effective; and it is further

ORDERED, ADJUDGED AND DECREED, that subparagraph (e) of paragraph 6 of said consent decree be and the same hereby is modified by suspending the provisions of said subparagraph (e), during the period of the aforesaid suspension of the provisions of said subparagraphs (i) and (k) of paragraph 6 and subparagraph (d) of paragraph 7 of said consent decree, to the extent that said provisions of said subparagraph

(e) enjoin any of the acts heretofore prohibited by said subparagraphs

(i) and (k) of paragraph 6 of said consent decree; and it is further

ORDERED, ADJUDGED AND DECREED, that nothing contained in said

consent decree shall preclude respondent, Ford Motor Company, from ac-

quiring and retaining ownership of and/or control over or interest in

any finance company, or from dealing with such finance company and

with the dealers in the manner provided in said consent decree or in

any order of modification or suspension thereof, including this order.

Dated: March 21st, 1949.

s/ PATRICK F. STONE  
U. S. D. J.

The undersigned hereby consent to the entry of the foregoing

Order and waive notice of settlement thereof.

A true copy:

s/ CHARLES E. HUGHES, JR.  
Charles E. Hughes, Jr.,

ATTEST: MARGARET LONG, Clerk,

By Mary Sweeney  
Deputy Clerk.

s/ WILLIAM T. GOSSETT  
William T. Gossett,

s/ CLIFFORD B. LONGLEY  
Clifford B. Longley,

s/ FREDERICK C. NASH  
Frederick C. Nash,

Attorneys for Ford Motor  
Company



s/ CHARLES E. HUGHES, JR.  
Charles E. Hughes, Jr.

s/ SAMUEL S. ISSEKS  
Samuel S. Isseks,

s/ MELBOURNE BERGERMAN  
Melbourne Bergerman,

Attorneys for Commercial Investment  
Trust Corporation, Commercial Investment  
Trust, Inc., Universal Credit Corporation,  
Universal Credit Company of Delaware,  
Universal Credit Company of Indiana, and  
Universal Credit Company, Inc.

s/ HERBERT A. BERGSON

Assistant Attorney General

s/ HOLMES BALDRIDGE

Special Assistant to the Attorney General

# **In the District Court of the United States for the Northern District of Indiana**

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**Civil No. 9**

**UNITED STATES OF AMERICA, PETITIONER**

**v.**

**CHRYSLER CORPORATION, ET AL., RESPONDENTS**

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**FINAL DECREE**

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

Therefore, it is ordered, adjudged, and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and pro-

ceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

3. "Respondent Finance Company" as used in this decree shall include Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Delaware, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Iowa, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Illinois, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Wisconsin, Commercial Credit Corporation, a corporation organized and duly authorized to do business under the laws of the State of New Jersey, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Indiana and their officers, directors, agents and employees. "Manufacturer" as used in this decree shall include Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, all of which

are organized and duly authorized to do business under the laws of the State of Delaware, Chrysler Sales Corporation and Dodge Brothers Corporation, both of which are organized and duly authorized to do business under the laws of the State of Michigan and their officers, directors, agents and employees.

4. The respondents, their officers, directors, agents and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from, or approved by, the Manufacturer that provides for the purchase at wholesale of new automobiles made by the Manufacturer, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note, or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in sub-paragraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Ford Motor Company" means Ford Motor Company, a corporation of the State of Delaware and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

## 6. The Manufacturer:

(a) Shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer;

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and

paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraph (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling Respondent Finance Company or any other

finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility or privilege only to registered finance companies as defined in subparagraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

(g) The Manufacturer shall not enter into or further continue any contract or agreement with any

dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies; or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company



on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy thereof certified by the clerk shall have been served on the Manufacturer.

2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

To Chrysler Corporation (hereinafter called the "Manufacturer"):

(A) This statement is made pursuant to subparagraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause entitled "*United States of America vs. Chrysler Corporation et al.*," dated November 15, 1938.

(B) The undersigned finance company, in acquiring retail time sales paper arising from sales of automobiles, from dealers of the Manufacturer, wherever located, will conform to the following rules:

- (1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a

finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

(2) The finance company will not require or accept assignments of wages or salaries, or garnish wages or salaries to collect deficiency judgments in respect of automobiles sold for less than \$1,000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to

any other person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or rewriting a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent of the delinquent instalments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable amount for the time of its employees as collection or repossession expenses;

(6) The finance company will not require the dealer to take a chattel mortgage or other lien on property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is in any way connected or affiliated with the Manufacturer, or that it has been approved, recommended or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered

finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the goodwill of the manufacturer or to the reputation of its products, or to the goodwill of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manufacturer information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established by the Manufacturer, approved by the Department of Justice of the United States, and incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other finance companies and interested parties and an opportunity for hearing to the persons so notified.

(C) The area within which the finance company conducts its business is: (*insert either "the United States" or the names of specific states, counties, or cities*), and notwithstanding the designation of an area, the finance company nevertheless will comply with clauses (B) and (D) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

(D) Until the effective date of any withdrawal of this statement by the finance company in the manner

provided by paragraph 1 of sub-paragraph (k), or in the manner provided by paragraph 5 or by paragraph 6, of sub-paragraph (j), of paragraph 6 of said decree, all retail time sales paper, created after the effective date if any plan or plans or modification thereof and covering new automobiles made by the Manufacturer, acquired by the finance company from the Manufacturer's dealers (whether located in the area described in Clause (C) hereof or elsewhere), shall be acquired by it in accordance with the terms of any plan or plans of financing adopted by the Manufacturer as provided by said sub-paragraph (j) and then in effect; provided:

a. The finance charges included in such retail paper may be less than the finance charges specified by such plan or plans or modification thereof, and the other terms of such paper may be more favorable to the retail purchaser than the terms so specified; and b. the finance company may acquire retail time sales paper covering new automobiles made by the Manufacturer in which the retail purchaser of the automobile is required to pay a finance charge in excess of the finance charge specified in the plan so adopted or modification thereof, but only if the finance company shall promptly credit such retail purchaser on the time purchase price of the automobile with the amount of the excess. The words "finance charge" as used in this statement shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an instalment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(E) This statement is filed on behalf of, and shall bind, the undersigned finance company and all

finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

(F) The address of the finance company's principal office is\_\_\_\_\_

\_\_\_\_\_ FINANCE COMPANY,  
By \_\_\_\_\_ *President.*

Attest:

\_\_\_\_\_, *Secretary.*

STATE OF \_\_\_\_\_

*County of* \_\_\_\_\_, ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, a notary public, \_\_\_\_\_, to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is \_\_\_\_\_ President of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

\_\_\_\_\_, *Notary Public,*

STATE OF \_\_\_\_\_

*County of* \_\_\_\_\_, ss.:

\_\_\_\_\_, being duly sworn, deposes and says that he is an officer, to wit the\_\_\_\_\_ of \_\_\_\_\_, the finance company which executed the foregoing statement, and that said statement is in all respect true.

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, *Notary Public.*

(Appropriate changes to be made for finance companies which are not corporations.)

5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and served upon the Manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in sub-division (11) of clause (B) of sub-paragraph (j) of this paragraph 6. The notice shall set forth the provisions of the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer or any registered finance company shall be entitled to make application to the court, for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and

justice may require (after such notice and hearing as the court may direct) suspending or revoking the registration of any registered company or dismissing the application. If the order shall provide that such finance company shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it upon such terms and conditions, if any, as the court may determine for the purpose of assuring further compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (E) thereof.

9. Service of all papers hereinbefore required to be made upon the Manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Highland Park, Detroit, Michigan.



10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not, except as hereinafter provided, recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith;

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

(2) From recommending to its dealers the use of such plans;

(3) From advising its dealers that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in such dealers' area or from advising the names of such companies;

(4) From advertising to the public and recommending the use of such plans;

(5) From advertising to the public that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in the area to which such advertisement is directed or from advertising the names of such companies.

1. The Manufacturer shall notify each finance company which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of

mailing the notice, upon which the plan or modification shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said plan or modification, as the case may be, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

3. The adoption or modification of any plan under this sub-paragraph (k) shall not preclude any aggrieved finance company or any other aggrieved person, who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sherman Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.

(l) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain wholesale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

**7. The Respondent Finance Company:**

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do business with it the amount of all reserves standing to the credit of such dealer, less any

off-setting indebtedness of such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

(d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government against said corporations upon allegations substantially identical with the allegations in Paragraph 18 of Section III of the petition herein, then and in that event the court shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company, or any of them, with respect to the allegations of said paragraph of the petition, as justice may then require. Such proceedings shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with respect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right

to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree in an original nonjury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing sub-paragraphs (*e*), (*f*), (*i*), and (*l*) of paragraph 6, or of sub-paragraph (*d*) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance Company shall mail a copy hereof to its zone, regional and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company, respectively, shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission

on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application

of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

12a. It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event, every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein, shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act, or practice of General Motors Corpo-



ration which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act, or practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act, or practice which is the subject matter of such plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act, or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act, or practice in combination with some other agreement, act, or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1040;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against

**General Motors Corporation** in the proceeding hereinafore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (*d*) to (*f*) and (*h*) to (*l*), inclusive of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (*a*), (*c*), and (*d*) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (*w*) by consent decree, or (*x*) by final decree of a court of competent jurisdiction not subject to further review, or (*y*) by decree of such court which, although subject to further review, continues effective or (*z*) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries corresponding to sub-paragraphs (*j*) and (*k*) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (*a*), (*b*), (*c*), and (*g*) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and

its subsidiaries in any manner specified in the foregoing sub-clause (i) of this clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act, or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act, or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of Paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer;

(4) The right of the respondents or any of them to make any application for the suspension of any provision of this decree in accordance with the provisions of this paragraph 12a and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of General Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such

area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, ad-make such applications and to obtain such relief is dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manufacturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances, or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust Laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of subparagraphs (j) and (k) of para-

graph 6 hereof, and the October, 1938, Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A) in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or Ford Motor Company shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings, to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the

respondents to make such applications and to obtain such relief is hereby expressly granted.

It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Respondent Finance Company other than General Motors Acceptance Corporation or Commercial Investment Trust Corporation or Universal Credit Company shall have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period; and (B) that such competitor is doing or engaging in any of the acts, practices, procedures, or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure, or thing required hereunder; and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a competitive disadvantage in financing the sale of automobiles as against such competitor: and (D) that the petitioner herein has not obtained or is not proceeding with the due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures, or things so performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no

future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws or regulations and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts, or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the October 1933 Term of this court is hereby extended indefinitely

for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12, hereof, which said paragraphs shall take effect as therein provided.

THOS. W. SLICK, *District Judge.*

DATED: NOVEMBER 15, 1938.



## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHRYSLER CORPORATION and )  
CHRYSLER MOTORS CORPORATION, )  
 )  
Defendants. )

Civil Action No. 1297

Filed: April 7, 1961

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

## I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, (15 U.S.C. Sec. 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, (15 U.S.C. Sec. 25), as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act, (15 U.S.C. Sec. 1) and of Section 3 of the Clayton Act (15 U.S.C. Sec. 14).

2. Defendants Chrysler Corporation and Chrysler Motors Corporation each transact business and are found within the Northern District of Indiana.

II

DEFENDANTS

3. Defendant Chrysler Corporation (hereinafter sometimes referred to as "Chrysler"), a corporation organized and existing under the laws of the State of Delaware, is hereby made a defendant herein. Chrysler and its subsidiaries are engaged in the manufacture, distribution and sale of automobiles, trucks, automobile parts and accessories.

4. Defendant Chrysler Motors Corporation (hereinafter sometimes referred to as "Chrysler Motors"), a corporation organized and existing under the laws of the State of Delaware, is hereby made a defendant herein. Chrysler Motors is a wholly owned subsidiary of Chrysler and performs the function of distributing and selling the automotive products manufactured by its parent, Chrysler.

5. The acts alleged in this complaint to have been done by each of the corporate defendants were authorized, ordered, or done by the officers, directors, agents, or employees of said corporate defendants.

III

CO-CONSPIRATORS

6. Numerous Chrysler Motors' franchised dealers throughout the United States and others have participated as co-conspirators in the violation of Section 1 of the Sherman Act hereinafter alleged and have done acts and made statements in furtherance thereof.

7. Whenever in this complaint reference is made to any act, deed, or transaction on the part of defendants Chrysler or Chrysler Motors, or the co-conspirators, such allegations shall be deemed to mean that

such acts, deeds, or transactions were authorized, ordered, or done by its officers, directors, agents, or employees while actively engaged in the management, direction and control of its affairs.

#### IV

##### DEFINITIONS

8. "Automobiles," as used herein, refers to new motor vehicles manufactured and sold to the general public for the primary purpose of providing transportation for a limited group of passengers.

9. "Dealer," as used herein, means a person, firm, or corporation, franchised by an automobile manufacturer to sell automobiles at retail in the United States.

#### V

##### TRADE AND COMMERCE

10. The automobile manufacturing industry in this country is composed of three major corporations, each manufacturing and selling a number of different lines of automobiles and two smaller companies, referred to as "independents," manufacturing and selling a limited line of automobiles. The three major companies, General Motors Corporation, Ford Motor Company, and Chrysler, accounted for approximately 91.1% of all automobiles produced in the United States during the year 1960. The remaining 8.9% was manufactured by the independents, American Motors Corporation and Studebaker-Packard Corporation. The total of automobiles manufactured in the United States during 1960 exceeded 6.6 million units.

11. Defendant Chrysler is one of the major automobile manufacturers, ranking third in sales of automobiles. Defendant Chrysler is also one of the largest industrial corporations in the United States, ranking in the top ten, according to amount of sales. Chrysler manufactures automobiles and parts and components therefor in plants located in

various states of the United States. For the year ending December 31, 1960, defendant Chrysler had net sales of \$3,007,048,707, total assets of \$1,368,533,895, and total automobile and truck sales of 1,147,001 units. The automobiles manufactured by Chrysler are sold under the trade names of Valiant, Plymouth, Lancer, Dodge, Dodge Dart, Chrysler and Imperial. Until recently Chrysler also manufactured a car under the trade name Desoto. In addition, Chrysler owns a substantial stock interest in the French company manufacturing the Simca automobile.

12. Chrysler Motors sells the automobiles manufactured by Chrysler to over 6,300 individual dealers located in all parts of the country. These dealers, holding franchises from Chrysler Motors and selling Chrysler produced automobiles, constitute approximately 20% of all dealers handling automobiles produced by manufacturers in this country. Chrysler Motors also distributes and sells the Simca automobile to dealers throughout the United States. A substantial portion of the automobiles manufactured by Chrysler and sold by Chrysler Motors moves in interstate commerce in a continuous flow from manufacturing plants to said dealers located throughout the United States. Chrysler and Chrysler Motors are engaged in interstate commerce.

13. Studebaker-Packard Corporation is the smallest, although the successor in interest to the oldest, manufacturer of automobiles in the United States. The company presently produces two lines of automobiles, the compact "Lark" and the semi-sports "Hawk" in a plant in South Bend, Indiana. The company sells its cars to approximately 2,258 dealers throughout the United States. Of this number, some 781 dealers were "dualled" with another domestic make of automobile, that is, the dealer was franchised by another domestic manufacturer to purchase and sell its automobiles. For the year ending December 31, 1960, Studebaker-Packard reported net sales of \$323,226,633, and net income of approximately \$708,000. During the year 1960, Studebaker-Packard produced approximately 105,958 automobiles, accounting for approximately 1.6% of total United States

production. Compared to the defendant Chrysler, Studebaker-Packard's production of automobiles, and its share of domestic production was approximately 1/10th of Chrysler's.

14. Chrysler Motors began the sale of automobiles with the trade name "Valiant" in the fall of 1959. In order to obtain an organization of dealers to merchandise this automobile, it offered contracts, or franchises, to certain dealers who were already engaged in the sale of other types of automobiles manufactured by Chrysler Corp. Some of these dealers were also engaged in the sale of automobiles manufactured by, among others, Studebaker-Packard Corporation.

## VI

### OFFENSES CHARGED

15. Defendants Chrysler and Chrysler Motors, and the co-conspirators, continuously, and for at least a year prior to the date of the filing of this complaint, have been and are now engaged in a combination and conspiracy, and have been and are now parties to unlawful contracts, agreements, and understandings among themselves and with others to the plaintiff unknown in unreasonable restraint of interstate trade and commerce in automobiles in violation of Section 1 of the Sherman Act.

16. The unlawful combination and conspiracy has consisted of a continuing agreement and concert of action between the defendants, the co-conspirators, and others the substantial terms of which have been and are:

- (a) that defendant Chrysler Motors, in selling the automobiles manufactured by defendant Chrysler, would require dealers to enter into written and oral contracts, agreements and understandings the substantial terms of which require the dealers to agree not to deal in or sell the Lark and other automobiles competitive with the Valiant automobile or other automobiles manufactured by defendant Chrysler;

- (b) that defendant Chrysler Motors would require dealers to enter into written and oral contracts, agreements and understandings which require the dealers to confine their purchase and sale of automobiles exclusively to the automobiles distributed or sold by Chrysler Motors;
- (c) that defendant Chrysler Motors would terminate the sales agreements of, or threaten to terminate the sales agreements of those dealers who did not adhere to the terms of the combination and conspiracy and agreements and understandings;
- (d) that defendant Chrysler Motors would use pressure, coercion and divers means to induce its dealers to terminate sales agreements with Studebaker-Packard and other competitors of defendant Chrysler.
- (e) that defendant Chrysler Motors would not give franchises to sell the Valiant automobile to any of its dealers who were also selling Larks and other competitive automobiles unless such dealer agreed to terminate, or cease ordering the competitive automobiles.

17. Defendants Chrysler and Chrysler Motors continuously, and for at least a year prior to the filing of this complaint, while engaged in the aforesaid interstate commerce, have sold automobiles to a substantial number of dealers on the condition, understanding and agreement that said dealers shall not deal in or sell the Lark and other automobiles manufactured and sold by others than defendants. The effect of these transactions, more fully described below, may be to substantially lessen competition or tend to create a monopoly in the distribution and sale of new automobiles in interstate commerce in violation of Section 3 of the Clayton Act.

18. On numerous occasions representatives of Chrysler Motors informed its dealers that they would not be awarded the right to sell Valiant or other Chrysler automobiles except on the condition that they terminate their

franchise to sell Lark automobiles manufactured by Studebaker-Packard Corporation and automobiles manufactured by others. A substantial number of Chrysler Motors dealers entered into such agreements and understandings with Chrysler Motors.

19. On numerous occasions prior to awarding a Valiant, or other Chrysler automobile, franchise, representatives of Chrysler Motors required that Chrysler Motors dealers, who also sold Lark automobiles manufactured by Studebaker-Packard, submit written resignations of their Lark franchises to Chrysler Motors' representatives who thereafter mailed said resignations to Studebaker-Packard Corporation. Such resignations were required by Chrysler Motors' representatives as a condition to awarding the Valiant, or other Chrysler automobile, franchise and were sometimes written by the Chrysler Motors representative. On other occasions, representatives of Chrysler Motors induced dealers with Studebaker-Packard franchises, as a condition to obtaining a Valiant, or other Chrysler automobile, franchise, to refrain from ordering Larks in order that Studebaker-Packard would itself terminate the dealers' franchise.

20. Defendants are continuing and will continue the offenses herein alleged unless the relief hereinafter prayed for is granted.

## VII

### EFFECTS

21. The aforesaid combination, conspiracy, contracts, conditions, agreements, understandings, and the aforesaid action and conduct of defendants in entering into, obtaining and enforcing them, have had the effect, as intended by defendants Chrysler and Chrysler Motors, of:

- (a) causing substantial injury to Studebaker-Packard Corp. by depriving that company of a substantial number of dealer outlets, and thereby substantially lessening competition;

- (b) foreclosing manufacturers of automobiles other than Chrysler Corp. from access to a substantial number of dealers for the retail distribution of automobiles manufactured and sold by them;
- (c) preventing a substantial number of dealers from acting as retail outlets for automobiles manufactured and sold by others than Chrysler and Chrysler Motors;
- (d) depriving consumers of the opportunity to purchase from a substantial number of dealers automobiles manufactured and sold by others than Chrysler and Chrysler Motors;

and have had the effect of unreasonably restraining and substantially lessening competition in, and tending to create a monopoly in, the aforesaid trade and commerce in automobiles in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.

PRAYER

WHEREFORE plaintiff prays:

1. That the Court adjudge and decree that defendants Chrysler, Chrysler Motors and the co-conspirators have unreasonably restrained, and substantially lessened competition in, the above-described interstate trade and commerce in automobiles in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.

2. That the aforesaid contracts, conditions, agreements and understandings, and the aforesaid action and conduct of defendants Chrysler and Chrysler Motors in requiring and enforcing said contracts, conditions, agreements and understandings, and in forming the unlawful combination and conspiracy, be adjudged and decreed to be illegal and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act and be ordered cancelled and terminated.

3. That the defendants and their officers, directors, agents, representatives, and all persons acting or claiming to act on their




behalf, be enjoined from continuing, reviving or renewing the aforesaid unlawful conduct and the aforesaid contracts, conditions, agreements and understandings and the unlawful combination and conspiracy, and from engaging in practices having the purpose or effect of continuing, reviving or renewing any similar violation of the Sherman Act or Clayton Act.


4. That a preliminary injunction issue enjoining and restraining the defendants and their officers, directors, agents, representatives, and all persons acting or claiming to act on their behalf from entering into or carrying out any contract, agreement or understanding or continuing any combination and conspiracy with any person which has the purpose or effect of requiring such person to refrain from dealing in automobiles manufactured by Studebaker-Packard Corporation or any other automobile manufacturer.

5. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

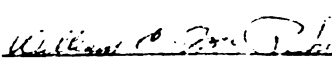
6. That the plaintiff recover its taxable costs.

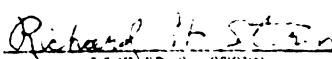
  
ROBERT F. KENNEDY  
Attorney General

  
LEE LOEVINGER  
Assistant Attorney General

  
GEORGE D. REYCRRAFT  
Attorney, Department of Justice

\_\_\_\_\_  
KENNETH C. RAUB  
United States Attorney

  
WILLIAM C. MCPHEE  
Attorney, Department of Justice

  
RICHARD H. STERN  
Attorney, Department of Justice

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

-----	X	
UNITED STATES OF AMERICA,	:	
	:	
Complainant,	:	
	:	
-vs-	:	Civil Action
	:	No. 9
CHRYSLER CORPORATION, et al.,	:	
	:	
Defendants.	:	
-----	X	

ORDER MODIFYING FINAL DECREE OF  
NOVEMBER 15, 1938, AS MODIFIED.

At a session of said Court, held  
in the Federal Building, South  
Bend, Indiana, on the 19th day  
of January, 1953.

PRESENT: Honorable Luther W. Swygert  
District Judge

This ~~matter~~ having come on to be heard on motion of  
complainant United States and motion of defendants Chrysler  
Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation,  
Dodge Brothers Corporation and Chrysler Sales Corporation, and the  
Court being fully advised in the premises and with the consent of  
counsel for the United States and of counsel for said defendants,  
and the defendants Commercial Credit Company, et al,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The part of said motion of complainant to terminate  
the suspension of and to restore and be found to be restored to  
full force and effect the provisions of subparagraph (i) of  
paragraph 6. of the final decree dated November 15, 1938, as  
amended, be and the same hereby is granted, and said subparagraph

(1) is hereby modified as hereinafter set forth.

2. The part of said motion of complainant to terminate the suspension of and to restore and be found to be restored to full force and effect the provisions of subparagraphs (e) and (k) of paragraph 6. of the final decree dated November 15, 1938, as amended, be and the same hereby is denied except as hereinafter set forth.

3. The motion of defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation be and the same hereby is granted as follows:

4. Subparagraph (a) of paragraph 6. of said final decree dated November 15, 1938, be and the same hereby is modified by inserting before the semi-colon at the end thereof the following: "to the extent and under the circumstances hereinafter set forth".

5. The provisions of subparagraph (b) of paragraph 6. of said final decree herein be and the same hereby are modified by providing that at any time a procedure for payment of wholesale shipments by finance companies engaged in the wholesale financing of automobiles substantially similar to the procedure attached to the Final Judgment in United States of America vs. General Motors Corporation, General Motors Acceptance Corporation, and General Motors Sales Corporation, Civil No. 2177 in the District Court of the United States for the Northern District of Illinois, Eastern Division, a reference to which is contained in paragraph IV(b) of such Final Judgment, or any modification thereof which may then be in effect, or any other procedure approved by this Court after sixty days' notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result, shall

be deemed to constitute compliance with this paragraph, thus making said subparagraph read as follows:

"So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions; provided, however, that at any time a procedure substantially similar to the procedure attached to the Final Judgment in *United States of America vs. General Motors Corporation, General Motors Acceptance Corporation, and General Motors Sales Corporation, Civil No. 2177*, in the District Court of the United States for the Northern District of Ill., Eastern Division, reference to which is made in paragraph IV(b) of said Final Judgment, or any modification thereof which may then be in effect, or any other procedure approved by this court after sixty days' notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result, shall be deemed to constitute compliance with this paragraph."

6. The provisions of subparagraph (c) of paragraph 6.

of said final decree be and the same hereby are modified by striking the words "place of business" where they first occur and inserting in lieu thereof the words "manufacturing or assembly plant", by striking the words "place of business" where they next occur and by inserting in lieu thereof the word "plant", and by inserting before the semi-colon at the end of said subparagraph the phrase "or only to finance companies which extend wholesale financing facilities pursuant to a procedure or plan adopted by Manufacturer under Subparagraph (b) of this paragraph 6.", thus making said subparagraph read as follows:

"(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any manufacturing or

assembly plant of the Manufacturer, it shall not refuse, upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such plant; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in subparagraph (j) of this paragraph 6. or only to finance companies which extend wholesale financing facilities pursuant to a procedure or plan adopted by Manufacturer under subparagraph (b) of this paragraph 6.;"

7. The provisions of subparagraph (d) of paragraph 6.

of said final decree be and the same hereby are modified to read as follows:

"(d) If the Manufacturer adopts a practice, procedure, or plan of furnishing to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business, provided that such continuing request shall be renewed in writing at the beginning of each calendar year, and shall be lodged in the office of the regional manager or other designated representative of the Manufacturer having jurisdiction over the dealer or prospective dealer; and provided that it shall not be a violation of this decree for the Manufacturer to furnish such information only to registered finance companies as defined in subparagraph (j) of this paragraph 6., or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer."

8. The provisions of subparagraph (e) of paragraph 6.

of said final decree be and the same hereby are stricken out and deleted.

9. The provisions of subparagraph (f) of paragraph 6.

of said final decree be and the same hereby are modified by striking

the words commencing in the first line thereof reading "give or ~~make~~ available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner", and by striking the semi-colon at the end of said subparagraph and inserting in lieu thereof a comma and adding after said comma the words "adopt any practice, procedure, or plan for giving or ~~making~~ available or denying or threatening to deny any dealer any service or facility, or for discriminating among its dealers in any other manner;", thus making said subparagraph read as follows:

"(f) The Manufacturer shall not, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies, adopt any practice, procedure, or plan for giving or making available or denying or threatening to deny any dealer any service or facility, or for discriminating among its dealers in any other manner;".

10. The provisions of subparagraph (g) of paragraph 6. of said final decree be and the same hereby are modified by striking the words "designated by the Manufacturer" at the end thereof and substituting therefor the words "of any finance company owned or controlled by the Manufacturer", thus making said subparagraph read as follows:

"(g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies; or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles of any finance company owned or controlled by the Manufacturer;".

11. The provisions of subparagraph (i) of paragraph 6. of said final decree be and the same hereby are modified by striking the words "Respondent Finance Company or any other finance

company" and inserting in lieu thereof the words "any finance company owned or controlled by the Manufacturer", and by striking out the words "Respondent Finance Company or such other finance company", and inserting in lieu thereof the words "such finance company", thus making said subparagraph read as follows:

"(1) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with any finance company of which the Manufacturer shall acquire ownership or control, that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer to patronize such finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;".

12. The provisions of clause (D) of subparagraph 4 of subparagraph (j) of paragraph 6. of said final decree be and the same hereby are modified by striking out "(j)" where it last appears therein and inserting "(k)" in lieu thereof.

13. The provisions of subparagraph (k) of paragraph 6. of said final decree be and the same hereby are restored to full force and effect as modified in the manner following: by striking subparagraph 3. of said subparagraph by inserting after subparagraph (5) subparagraphs (6) and (7) and modifying paragraph 1., all as set forth below, thus making said subparagraph (k) read as follows:

"(k) The Manufacturer shall not recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

"(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manufacturer or from time to time withdrawing or modifying the same;

"(2) From recommending to its dealers the use of such plans;

"(3) From advising its dealers that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in such dealer's area or from advising the names of such companies;

"(4) From advertising to the public and recommending the use of such plans;

"(5) From advertising to the public that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in the area to which such advertisement is directed or from advertising the names of such companies;

"(6) From including mention of any finance company owned or controlled by Manufacturer in Manufacturer's institutional advertising;

"(7) From advertising any finance company owned or controlled by Manufacturer or any other finance company in connection with sales made by factory-owned retail stores.

"(1) The Manufacturer shall notify each registered finance company, and any other finance company which makes specific request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date upon which the plan or modification shall go into effect. The notice to each registered finance company shall be mailed not less than thirty days



prior to the date upon which the plan or modification shall go into effect. Any registered finance company so notified may before the date upon which the plan or modification becomes effective file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said plan or modification, as the case may be, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the COURT, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

"2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by the decree."

14. The provisions of paragraph 10. of said final decree be and the same hereby are stricken out and deleted.

15. The provisions of the second paragraph of paragraph 12. of the final decree be and they hereby are modified by inserting after the words "acquiring or retaining ownership of and/or control over or interest in any finance company" the following: "or from making loans to such finance company", thus making said second paragraph read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12. and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from making loans to such finance company or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of

them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted;"

and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that

16. The last paragraph of the order of this Court made and dated herein on March 29, 1949, be and it hereby is modified by inserting after the words "any finance company" where they first occur the following:

"from making loans to such finance company, or",  
thus making said paragraph read as follows:

"ORDERED, ADJUDGED AND DECREED, that nothing contained in said consent decree shall preclude respondents, Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Chrysler Sales Corporation and Dodge Brothers Corporation, from acquiring and retaining ownership of and/or control over or interest in any finance company, or from making loans to such finance company or from dealing with such finance company and with the dealers in the manner provided in said consent decree or in any order of modification or suspension thereof, including this order."

Dated: January 19th, 1953.

/s/ Luther W. Sawyer  
U.S.D.J.

The undersigned hereby consent to the entry of the foregoing Order and waive notice of hearing thereon.

/s/ George K. Beemer

Keely, Drye, Newball, Mirinnes

by s/ T. R. Iserman (Member of said Firm)  
Attorneys for Chrysler Corporation,  
DeSoto Motor Corporation, Plymouth  
Motor Corporation, Dodge Brothers  
Corporation and Chrysler Sales  
Corporation.

The undersigned hereby consent to the entry of the foregoing Order and waive notice of hearing thereon.

s/ Joh Ford Baecher  
Special Assistant to the  
Attorney General

s/ Newell A. Clapp  
Acting Assistant Attorney General

s/ Victor H. Kramer  
Special Assistant to the Attorney  
General

s/ Gilmore S. Haynie  
United States Attorney

s/ James E. Keating  
Assistant United States Attorney

The undersigned hereby consent to and waive notice as to the entry of the foregoing Order, reserving, however, any rights they may have under the final decree of November 15, 1938, as modified, to make application for modification, suspension or vacating of any of its provisions.

Muecke, Mules & Ireton  
by s/ J. Francis Ireton  
(a member of said firm)

Attorney for Commercial Credit  
Co., a Delaware Corporation.

Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania; the Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Iowa; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws [fol. 2] of the State of Illinois; Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Wisconsin; Commercial Credit Corporation, a corporation organized and duly authorized to do business under the laws of the State of New Jersey; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Indiana.

(The information referred to at pp. 48 and 57 follows:)

AMERICAN FINANCE CONFERENCE, INC.,  
Chicago, Ill., July 28, 1961.

HON. EMANUEL CELLER,  
Chairman, Subcommittee No. 5, Committee on the Judiciary,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is the corrected statement given before the Judiciary Committee, along with a copy of my written statement.

Also enclosed is a copy of the "White Paper" on Automobile Financing." This white paper was referred to on several occasions by several witnesses including the opposition and for that reason, it should be in the records.

The committee also asked for a copy of the opinion of Holmes Baldrige with respect to the 1952 consent decree being res adjudicata so far as divestiture is concerned. The opinion is attached.

Sincerely yours,

PAUL JONES,  
Chairman, Executive Committee.

P.S.—Article in March 24, 1961, Time magazine and another from April 17, 1961, issue of Automotive News, which I promised in my statement would be filed, are also enclosed.

(The excerpts from Automotive News appear in Mr. Jones' statement, at pp. 80 and 81.)

#### HOLMES BALDRIGE OPINION

##### A. Question

Whether the 1952 consent judgment would be res adjudicata of another suit by the Government to divorce GMAC from General Motors for alleged violation of section 7 of the Clayton Act, where the second suit is supported by evidence showing "leverage," which evidence (or fact) was not alleged in the first suit.

##### B. Nature of doctrine of res adjudicata

(1) The legal doctrine of res adjudicata is that an existing final judgment rendered upon the merits of a case, without fraud or collusion, is conclusive of the rights of the parties to such suit in all other actions between the same parties either in the same or in any other jurisdiction, and constitutes a bar to any subsequent action on the same claim or cause of action between such parties.

(2) The doctrine is not concerned with the type of relief granted in the first suit or sought in the second suit.

(3) The doctrine is not affected by the discovery of new facts which are pleaded in the second suit which were not pleaded in the first suit, whether such facts existed at the time of the first suit but were unknown to the Government, or whether they developed subsequent to disposition of such suit.

(4) The doctrine of res adjudicata is concerned with the nature of the cause of action, not with the various types and classes of facts (or evidence) which support such cause of action.

(5) A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show.

(6) The number and variety of facts alleged do not establish more than one cause of action so long as the result of such facts, whether they be considered separately or in combination, is the violation of but one right by a single legal wrong.

(7) The mere multiplication of grounds (i.e., types and classes of facts) causing the same injury does not result in multiplying the causes of action.

(8) The facts are merely the means, not the end. They do not constitute the cause of action. They show merely the existence of the cause of action by demonstrating what the wrong is.

(9) Hence the thing which in contemplation of law as its cause becomes a ground for action is not the group of facts, but the result of these facts in a legal wrong, the existence of which, if true, such facts conclusively prove.

*C. Application of doctrine of res adjudicata to a second suit by the Government in which the violation is supported by the fact of leverage*

1. *The original suit for divestiture.*—(a) The cause of action in the former suit was acquisition by General Motors of a financing affiliate which had the effect either of substantially lessening competition or of tending to create a monopoly in a line of commerce; namely, the time sales financing of General Motors cars at both wholesale and retail.

(b) This cause of action was supported by various types and classes of evidence (or facts) showing dealer coercion.

2. *The second suit for divestiture.*—(a) The cause of action would necessarily be the same as that in the first suit; namely, the acquisition by General Motors of a financing affiliate which had the effect either of substantially lessening competition or of creating a monopoly in a line of commerce, namely, the time sales financing of General Motors cars at both wholesale and retail.

(b) The evidence supporting such a cause of action would be the fact of leverage and its effect upon competition, rather than dealer coercion.

3. The first suit would be res adjudicata of the second because the second suit involves the identical cause of action as the first suit; namely, factory affiliation with a finance company with its illegal effect upon competition. The circumstance that the second cause of action would be supported by the fact of "leverage," whereas the first cause of action was supported by various classes and types of dealer coercion, does not change the nature of the cause of action. And the doctrine of res adjudicata applies to causes of action—not to types of evidence or facts presented to prove the cause of action.

(The information referred to on p. 75 follows:)

## BUSINESS

The man with the magic voice and manner is neither preacher, politician nor gunslinger—though he needs to be a good deal of each in his business. He is James Martin Moran, 47, the ebullient, aggressive and imaginative owner and president of Chicago's Courtesy Motor Sales Inc. To Chicagoans he is known simply as "Jim Moran, the Courtesy Man." Through hard work, hard sell and his TV pitches on behalf of his autos, Jim Moran has built his firm into the nation's biggest auto dealer in business at the same stand and the world's largest Ford dealer.

He has also become something of a TV personality; on the air he has held his own with Bob Hope and Danny Thomas, and in one Chicago poll he outran Ed Sullivan and Steve Allen in popularity. Moran's biggest assets are an honest face and a folksy manner that send shivers up and down the stitching of many a wallet and purse. He is so effective that rival car dealers are driven to fury when they discover that their own relatives—even their mothers—are singing the praises of "that honest Mr. Moran."

**Brogue & Braggadocious.** Though Moran's career as a dealer has not always encouraged a mother's unquestioning trust, his image as "that honest Mr. Moran" is so firmly entrenched that competitors accuse him of "brainwashing" the public. Half Irish and half Italian-German, Jim Moran has a sunny disposition and a natural liking for people—and for their money. To his showrooms from near and far he lures his prospects by constantly repeating and rephrasing his main theme: "We can save you so much money at Courtesy Motors." Never too insistent on correct English, he may add: "This may sound a little braggadocious, ladies and gentlemen"—and it usually is. He has even filmed his pitches from a hospital bed (where he informed his listeners that he was recovering from "an appetitomy"), ending the show by blowing kisses to his wife and children at home.

Moran has a well-honed staff of 94 salesmen at his six-block complex on Chicago's West Side but they are only shadows of the master. He personally sells more than 1,000 cars a year. He has an amazing memory for names, can make

total strangers feel that he has known them for years. He touches the common chord with a heavy hand, chatting with women about their children, with men about sports. He plays shamelessly on nationalities. If the customer is Irish, he puts on a brogue. If the customer is Jewish or Italian, Moran has a few phrases to match, and he can put on a German accent worthy of Erich von Stroheim.

He also knows how to talk business. Last year Courtesy Motors, which sells regular Fords, the top-selling compact Falcon,\* and Renaults, Peugots and Triumphs, sold 21,000 cars, 9,000 of them new and 12,000 used. Moran seems to shine with so much sincerity and belief that his cars are best ("the most gorgeous car you have ever seen") that almost every customer feels he is getting the same deal that Moran would give his own brother—even though competitors claim that it is often no better than car buyers can get elsewhere. Moran treats such claims with royal disdain. "The real crux of the matter," he says modestly, "is that there have been dealers who wanted to get rid of Jim Moran because his personality is so unique."

**Shared Destiny.** If Jim Moran is unique in many ways, he is nonetheless inseparable from the problems, hopes and destiny of the nation's 32,000 new-car dealers (another 25,000 sell only used cars). They hold the key to how soon the U.S. economy will turn upward, for in the spring they usually sell nearly 30% of their new cars. This week dealers greeted spring's arrival with a mixture of hope and apprehension. Inventories still hovered around 1,000,000 cars; some dealers still have 1960 models to sell.

But new-car sales in the first ten days of March rose 13% above the same period in February, though still below March of last year. Ford dealers for the first time

\* Which last week placed first in the *Mobiles Economy* Run from Los Angeles to Chicago, with an average of 31.68 miles a gallon. Other winners in their classes: Corvair Monza for four and six-cylinder compacts with automatic transmission (20.34 m.p.g.), Buick Special for eight-cylinder compacts (23.09), Plymouth Savoy for standard-sized cars (23.15), Ford Fairlane for low-priced V-8s (21.33), Chrysler Newport for medium-priced eight-cylinders (20.0), and Cadillac for high-priced eight-cylinders (18.93).

### AUTOS The Arabian Bazaar

The curly blond hair suggests Liberace, the gracefully gesturing hands Bishop Sheen, the aquiline nose, strong chin and steely blue eyes a Marshal Matt Dillon. But it is the voice that seizes the listener—especially women. Out of the TV set it floats, low and pleasant, friendly and soothing, almost hypnotic. Behind it sits a sharply dressed, broad-shouldered six-footer, flashing smiles with neon-sign regularity and radiating a homeyness rarely found in homes. When the flow of words is finally finished, he looks straight into the listener's eyes and ends with a benison: "God bless you."



BUICK SPECIAL

PONTIAC TEMPEST

RAMBLER AMERICAN

VALIANT

CORVAIR

FALCON

Sold with lowballs, highballs and the double dip.

TIME, MARCH 24, 1961

in 1961 sold more cars than in the same period a year ago, when much of the nation was hit by a severe blizzard. American Motors announced record high Rambler sales for March's first ten days. For the first time in six months, Chrysler increased production plans, intends to turn out 25% more cars in March "due to continued improvement in retail deliveries and dealer orders." Even the used-car market is improving, and prices rose for the fourth consecutive ten-day period. "If it stays up in March," says Ford Division General Manager Lee Iacocca, "come late April I predict a strong automobile market."

**Economy of Any Cost.** To spur the market, Detroit has some bright new offerings. Ford announced another new compact model, the Falcon Futura, nearly identical outwardly with the Falcon except for large hubcaps and three chevrons on the rear fenders, but introducing an opulent interior, with bucket seats, deep-pile carpeting and all-vinyl upholstery. Bucket seats seem to be the coming thing; first used in compacts by the Corvair Monza, they will soon be added to Ford's Comet, Chrysler's Lancer and the Buick Special. On April 1 Pontiac will introduce a third model of its compact Tempest; it is a sporty two-door, six-passenger coupé one-half inch lower than the other two Tempests. For 1962, General Motors plans a whole rash of new compact convertibles.

Detroit has a new phrase for the mood the U.S. car buyer is now in: the economy-luxury market. This apparent contradiction in terms is the discovery of Detroit's market research, which on past occasions has proved about as trustworthy as the used car that has presumably been driven only to and from church by an old lady. First the market researchers told Detroit that the nation wanted big cars with tail fins and plenty of spaghetti; when that proved not to be the case, they told the automakers that the nation was sick of big cars and wanted small, unadorned cars with built-in economy; now Detroit has discovered that Americans want economy all right—but are willing to pay any price to get it. Nearly 30% of the regular Falcon's customers, for example, insist on a 100-h.p. engine instead of the standard 85-h.p.; 50% want white sidewalls, 68% want the "trim kit"—extra chrome on the outside, plated nylon on the inside, etc.—at \$78 extra.



DEALER MORAN SELLING CAR TO KENNETH & LULA MAE FORBIS  
Helped by blarney, benisons and a ball of wax.

Detroit would like to create yet another trend. This fall Ford will bring out two new cars as yet unnamed, temporarily called "the Canadian X" and "the Canadian Y." They will fall between the compacts and standard cars in size and price, combine the roominess and utility of the larger cars with a smaller, compact look. The Canadian X will have a 115½-in. wheelbase v. Falcon's 109½-in., will become the low end of the standard Ford line. It will be aimed at a mass one-car family market, may eventually replace the standard Ford. The Canadian Y, with a 116½-in. wheelbase, will probably become the smaller Mercury. With its eye on Ford, Chevrolet is also getting ready an in-between car to be called the Corsair, with a wheelbase of 109-in., but added sheet metal that makes it look bigger.

**Traffic Jam.** All these cars will descend on a market in which there is such a traffic jam of nameplates and models that many a customer is already confused enough. The customer now has 17 standard-sized cars to pick from, most of them with such a welter of models, motors, options and accessories that it is possible to buy a Chevrolet in more than 100,000 different combinations. And compacts are available in 89 models produced under

eleven nameplates. Only the small foreign car has not been burgeoning; since the U.S. compacts were introduced, sales of foreign cars have taken a sharp drop. Says A. C. Robbins, a Beverly Hills Chrysler-Plymouth dealer: "The manufacturers are trying to make a car for every \$25 of the market."

Some dealers complain that this proliferation confuses not only the customer but the salesman, too. Often compacts with different names are remarkably similar. General Motors' Olds F-85 and Buick Special both have the same body shell and almost the same motor; Ford's Falcon and Comet have the same engine, the Chrysler Valiant and Lancer are look-alikes. Many dealers not only battle competitors but knock cars made by the same manufacturer. Dodge puts out a "confidential" booklet for Lancer salesmen pointing out the good features of the Lancer and the bad ones of the Valiant—though both are made by Chrysler. Sample comparison: "Lancer; new styling inside and out, Valiant; last year's styling."

**The Zestful Game.** The wealth of car models—and the dearth of sales—has put new zest into that great American game: the battle of wits between car seller and buyer. Once the customer's main



RAMBLER CLASSIC

COMET

LARK

OLDSMOBILE F-85

LANCER

Bought with a larcenous heart and one foot in the door.

Joe Clark



interest was in car quality and dealer reliability, and he bargained halfheartedly. Today's customer is sharper, shrewder, better informed. He knows that dealers are overstocked with cars and anxious to sell. Detroit has egged him on with the great registration battle between Ford and Chevrolet, in the last few years dealers have been forced to cut profits drastically just to move their cars. The first question a buyer now asks when he walks into a showroom is: How much below list can I get it for? Result: haggling is in its heyday. Sighs E.C. McAllister, head of his own Mercury-Comet agency in Dallas: "It's like an Arabian bazaar."

The dealer, suspected for years by buyers of having a little larceny in his heart,

walked into a Salt Lake City showroom on a Saturday afternoon, was greeted by two customers who said: "Are you a salesman?" When he said no, one customer sighed. "There doesn't seem to be one"—and both walked out. After searching the place, the newcomer finally found a salesman in a back room—figuring out a deal for a customer on a pad of paper. "We shopped at six auto dealers," adds Cleveland Bakery Foreman W. Kelso Smith. "They had our name and address, but not one followed up with a visit. You'd think that the way business is, they'd be out fighting for it." Dealers blame a decline in the quality of salesmen. One Miami salesman, asked by a customer what kind of torque converter

Q The bush: the salesman persuades the customer to sign a blank contract after he has agreed to certain terms, then fills in figures different from those agreed on or adds additional costs for such nebulous items as delivery charge, handling costs and excise tax (which is already included in the price). The bush is illegal in some states.

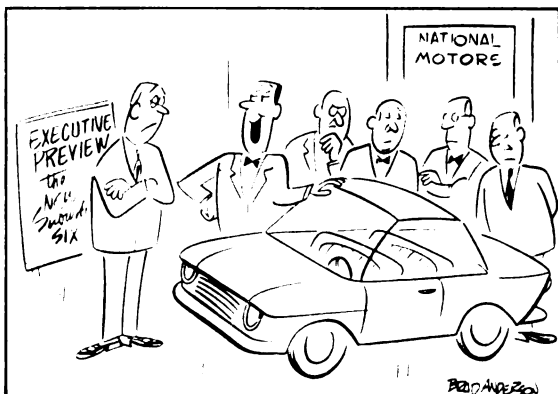
A variation on the bush is to fill out the contract at the agreed-upon figure, sending the customer away satisfied. Then the salesman calls later and informs the customer that a mistake has been made and that the car will cost more money—figuring that he will pay the difference rather than go through the whole hassle again. Some salesmen try to close a deal by insisting, "I can only get it for you at this price today—though they will be glad to quote the same price tomorrow." Another salesman rushes off into the back room to check the new low, low price with his boss, but often simply goes for a drink of water. He comes back breathless, bearing the news that his boss has lost his mind and agreed.

A good salesman scorns such tricks content to play on customer psychology. Salesmen get practice. They do not like to sell a man alone—they know that they will only have to do the job all over again when his wife comes in. If the wife comes in first, many salesmen try to sell her on the car's color and upholstery, quoting her a price considerably above their rock-bottom offer. When the husband comes in later, they boost the price by letting him force the price down so he can show his mate that he is the sharp bargainer in the family.

Salesmen must be wary of the husband who knows nothing about mechanics, the trick is to avoid making him look like a boob. To soften the customer who is undecided between two makes, salesmen often slyly deride the competition with such remarks as "Did you ever notice its cheesy dashboard?" In the final crucial moments of the haggle, they will frequently try to win the customer by offering to throw in a side-view mirror or whitewalls without charge. Salesmen find that men make most of the car-buying decisions, but let wives peck color and interior. A salesman knows that he has a man trapped when a wife stands back, looks fondly at a car and gurgles: "Isn't that cute?"

To get the customer into the showroom in the first place, dealers often use "bird dogs"—barbers, service-station operators or friends who for a fee tip them on car hunters. Less rewarding are "cold spurs"—telephone contacts taken from a list of state auto registrations or from telephone books.

Red Jackets—or Else. Like every big dealer, Chicago's Jim Moran knows that the best way to build up a solid list of customers is to become a pillar of the community—and a solid pillar he is. "If a dealer isn't interested in his community," says Moran, "then he's a poor businessman. I think that any place I go, I am an ambassador of Courtesy Motors."



"...AND GENTLEMEN, YOUR NEW SMALL CAR PROVES SUCCESSFUL. THEN NEXT YEAR WE'LL INCREASE THE HORSEPOWER, MAKE IT TWICE AS BIG, AND DOUBLE THE PRICE!"

now complains that it is the buyer who cannot be trusted. Buyers shop around from dealer to dealer, using one man's figures to whipsaw another with. "They stand there with one foot in the door," says one aggrieved dealer, "just waiting to rush to the next place." What is worse, say the dealers, buyers frequently quote nebulous offers to get a better deal. Sometimes when trading in a car, they replace good tires with bad after the deal is set, or strip off seat covers and accessories before turning the car in. Chortled one New York car buyer who had just got a good price on his trade-in. "The car has only one trouble. Every once in a while it just stops running."

What's Torque? But even in the bazaar-like haggling auto market, nerve and imagination are all too rare. "The trouble with the auto business," says Miami ex-Chevrolet Dealer Anthony Abraham who sold his dealership this month, "is that nobody really sells automobiles any more. They sell the deal. Many salesmen sit behind a desk pushing a pencil on a pad when they would be out pushing the qualities of the car. Recently a customer

a new car had, could only stammer: "I don't know, I've only been here a couple of months."

A Drink of Water. On the other hand, some aggressive salesmen use so many tricks and traps to sell the customer—ranging from legitimate gamesmanship to downright shabby conduct—that customers enter a showroom on guard. Simple unscrupulous tactics.

Q The highball: the salesman offers an unrealistically high price for the customer's trade-in, then jacks up the price of the new car (often with accessories) to cover the too-high trade-in, or backs off altogether.

Q The lowball: the salesman quotes a rock-bottom price for the new car to win the customer, later hikes up the price, declaring that a mistake has been made or that the quoted price was for another model.

Q The double dip: two salesmen work on a customer, pretending to be in competition with each other. When the first salesman is turned down, another moves in with a better deal. Later, the two split the commission.

Moran belongs to many charitable, civic and religious groups: is a prominent Roman Catholic layman. He coaches a Little League team that last season won a district championship, has run several TV talkshows for charity. If an orphanage turned down chances are that it would be Jim Moran, the Courtesy Man who would start a drive to rebuild it—and this in conspicuously himself. He is beloved by the clergy for his contributions and for giving them what is generally known as "the clergyman's discount" on cars at cost. He sponsors an annual Lake Michigan endurance swim, spends \$5,000 a year on advertising.

Once all this hoopla gets the customer in Moran makes it hard for him to leave without a car. His salesmen are among the most nervous, aggressive and articulate in the Chicago area. They begin in low key but they breathe harder, talk faster and bargain more shrewdly as the moment of truth approaches. Not even a peddler steps in their door without leaving his name and address, later getting a tenacious and thorough follow-up. Moran forces his salesmen to wear marmalade jackets and some have quit rather than do so (chuckles Moran). "They'd give anything to get out of those red jackets." He usually fires any salesman who cannot consistently make \$250 a week in commissions, but just being around Moran seems to endow most of them with a profitable touch of blarney. A customer recently mentioned his wife's name to a Moran salesman in the course of looking at a car. Helen? cried the salesman rapturously. "That's the dearest name in all the world to me because that happens to be the name of my wife."

"There's the Monster." Moran—whose own wife is Arline—lives in a sprawling, 10-room ranch house in Lincolnwood, a Chicago suburb with Arline and the three children, two girls, a boy. He has three

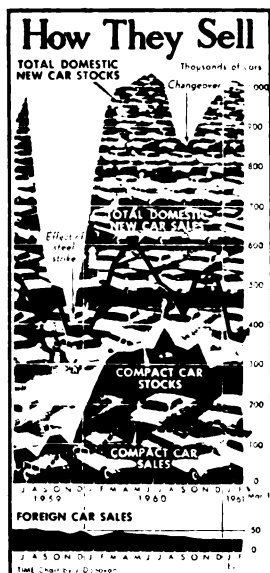
motorboats, a summer home in the country and a winter home in Florida, and a 30-ft. by 60-ft. swimming pool that he shares with youngsters once a week, hiring a lifeguard to watch over them. He likes to watch himself on one of his six TV sets, greets his twice-weekly taped appearance with "There's the monster."

After a scant breakfast, Moran drives to his office in his four-door hardtop Ford Galaxie, rattles through the mail on his 12-ft. desk, then begins his daily tour of his auto empire. He pops into the new-car showroom, opening new-car doors to make sure the interior is clean, checks to see how sales are going. In the service department, he leafs through service orders to see if there is any pattern of complaints that suggest a weakness in a new car. He even drops into the repair waiting room, applying his sunny personality and speeding up someone who has an appointment with the dentist. Says Moran: "There's a million things that nobody asks about but me." Moran, who neither smokes nor drinks, keeps in top shape by leaving the office every day at 2 p.m. for a half-hour, 44-lap swim at the Illinois Athletic Club.

He draws a \$120,000 salary from Courtesy Motors, but that is not all he makes. "If you're in the automobile business today," he says, "and your only profit is in selling new cars, you aren't going to make money. You have to be in insurance, financing, the whole ball of wax." He owns Grand Insurance Corp., Grand Acceptance Corp., a finance company that will handle one-third of Courtesy's financing by year's end, and Grand Finance Corp., a small loan company. He also runs Courtesy Lease-Save Plan Inc., which rents out about 1,200 cars and trucks took in \$1,200,000 in 1960. From these corporations Moran draws another \$24,000 a year.

**Life to 30 Days.** Jim Moran got into business when he was only eight, selling soda pop to Sunday baseball crowds near his home in Chicago's Rogers Park neighborhood. When his father died in the Depression, the twelve-year-old boy took a paper route and an after-school job in a service station to help his mother and sister pay the bills. He never got to college. Fascinated by cars, he got a job in a service station soon after graduation from high school. Within a few years he had his own service station, beating customers to the pump with a big hello. Drafted in World War II, he got out of the Army with a medical discharge in 1941 (an arthritic condition) and, taking advantage of the car shortage set up a used-car lot.

He bought a Ford dealership in 1945 from a dealer going out of business, but Ford gave the lucrative franchise to someone else. Moran shopped around until he got Hudson to take him on as a dealer, shifted to a better location, and called his new firm Courtesy Motors. Moran went on TV with other Hudson dealers jointly sponsoring a wrestling match. He made such a hit that he took over the sponsorship and announced his own commercials. After that came a TV variety show of his own, a barn dance and late



movies, with Moran making his pitches at intermissions. Before long he was Hudson's No. 1 U.S. dealer, selling more than 10% of the factory's production.

Moran's eager-beaveriness got him into trouble. When he began offering a "lifetime guarantee" against defective parts in his cars, customers complained that he met their objections by insisting that parts were worn by age rather than defective. His salesmen were also accused of "bushing." Complaints piled up in a thick file at the Chicago Better Business Bureau. In 1954 Chicago's other Hudson dealers brought an antitrust suit against both Moran and Hudson, charging that Moran got his cars from the factory at a favored price. Moran denied the charges, but the factory made a cash settlement out of court.

When Moran saw that Hudson and its backward styling were about to go under, he switched to Ford—which was now glad to welcome him. In his first month with Ford he sold an astounding 804 new cars. His reputation also took a turn for the better. He revised his advertising, shrank his lifetime guarantee to a more realistic 30 days. Complaints to the Better Business Bureau have steadily dwindled, last year totaled only 25.

**Dog Drivers?** Courtesy Motors' sales have risen every year since Moran went with Ford except recession 1958, reached a new record of \$41 million last year. But the company's net earnings were only a meek \$17,000, down 55%—reflecting the narrow profit margin a dealer has in



DANNY THOMAS & MORAN  
Liberace and Bishop Sheen in one.

TIME, MARCH 24, 1961

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today's shopper's market. In 1960 the average dealer's pretax profit margin was only .5%—the second worst year of the last ten. Dealers averaged \$22 profit on each new car sold. One result: dealer failures are up 43%. Last week Denver's Bob Jones Skyland Ford Inc., once one of the biggest U.S. Ford dealers, closed its doors, and Cicero, Ill.'s Sterling-Harris Ford Agency faced bankruptcy proceedings.

Many dealers complain bitterly that Detroit has overproduced both in variety of models and cars, forced them to take more cars than they need so that the giants can outsell their competitors. Dealers point to their own slim earnings and to General Motors' 8% net profit last year. "When it became apparent we were in trouble," complains Denver's Bob Jones, "I went to the Ford people and tried to pull this dealership down to 75 units a month. But they said no, that I had to sell 160 new cars and 40 trucks each month. They are going to have to teach cats and dogs to drive to ever sell the number of cars they want to produce and push out on dealers." Nonetheless, counters Ford's Lee Iacocca, "the dealers are the first to acclaim you for coming out with new models."

Jim Moran says that he takes only as many cars as he wants, adds that dealers have to be firm with Detroit to keep from being overloaded. He also thinks many dealers too rigid on prices. "If they can't sell a car for a \$300 or \$400 profit," he says, "they won't sell it. If we can only sell a car for \$50 profit this month, we have to sell it for \$50 profit. Maybe next month we'll have to take \$40. Maybe the month after that it will be \$100. We have to take what the market will bring." Moran sniffs at dealers who want a factory-fixed fair-price arrangement: "A lot of dealers are sitting around waiting to be legislated into making a living."

**Poor Service.** Many dealers insist that customers make a mistake by shopping around in search of a rock-bottom price; they say that if the customer does not buy from his local dealer, he cannot expect to get good service from him later. But buyers answer that service is too often lip service, fancy slogans, a brusque shop steward and an indifferent mechanic. Many a big-city buyer has had such poor experiences with dealer service that he prefers to take his car to the corner service station or even to drive to a small town, where the service is usually better.

"Let's face it," says Sales Manager Joe Bensley of Los Angeles' Bruin Motor Co., "service in most places is lousy." Bensley—who is known for good service—and other dealers blame the factory, complain that Detroit inspects only one in ten cars, sends dealers cars that take two or three days to get into shape, gives them an in-

sufficient allowance to do the job. "The dealer just can't do it in a volume business," says Bensley. "He has to push out cars as fast as he can. The customer finds all kinds of things wrong with the car, and tries to get them fixed. The dealer either won't listen or wants to charge for things that should have been fixed right before the car was sold. The customer has been hooked once, but he'll never buy the same car again." Other dealers blame their troubles on the difficulty of getting good mechanics ("Everyone wants his kid to go to college and not work in a garage"); still others complain that Detroit's warranty allowance on new cars is often not enough to cover the repairs that the customer expects.

**On the Carpet.** Jim Moran believes that service is the dealer's own responsibility. "This is an area," he says, "that many auto dealers have ignored for some time—and it is the only way you can get repeat business in this competitive market." After each car is sold, Moran sends a form letter to the buyer inviting him to report on his service. He assigns a service superintendent for each new car, calls him on the carpet—and sometimes fires him—if too many things go wrong.

Moran believes that many dealers also neglect the potential of a used-car operation; his brings him in 51.5% of his gross profits. "Any new-car dealer who isn't in the used-car business," he says, "will not continue to be in operation. You cannot sell a new car unless you buy the old car. The key to the business is being able to sell the used car." He reconditions used cars in a 40,000-sq.-ft., \$500,000 plant that he grandly calls "the Courtesy Conditioning Assembly Line." Profits are bigger on the used cars, since each one is different, buyers cannot shop around and compare price.

**Merely a Fad?** As Ford's biggest customer, Jim Moran takes a vital interest in the company's plans—but he is a man of independent mind. He thinks that the trend to luxury compacts, combined with a trend to greater power, may eventually cause the compact to grow right up again into a bigger, more comfortable car. He considers present compacts—including his hot-selling Falcon—transient fads that will probably win not much more than their present (30%) share of the market. Moran thinks dealers ought to be consulted when automakers are planning new models. "If I have \$4,000,000 invested in my company," he says, "then I should be invited to see what I'm going to have to sell."

For Detroit, the proliferation of new cars is a form of gambling, by which automakers hope to hit on a widely accepted "ideal" car that they can produce in huge quantities, enabling them to drop weaker lines. Weaker dealers, too, are on the way

out. Car dealers have decreased from 47,000 in 1951 to the present 32,000—and even dealers themselves think there are still too many. They expect that there will be fewer dealers and more big "super-market" dealers, carrying the full range of cars for the manufacturer. In such a market there will be plenty of business and profit—for those who survive.

# **A 'WHITE PAPER' ON AUTOMOBILE FINANCING**

## **PREFACE**

This presentation is called a "White Paper" in keeping with the traditional use of this term for a complete, documented report on a matter of public interest.

A White Paper on Automobile Financing deals with the question of monopoly power in sales financing and auto manufacturing. It discusses differences between the positions of captive and independent finance companies, and the consequences for the auto industry and the public.

Over the years considerable interest has been evinced in this subject, and related subjects, by both public and private agencies. Inquiries on various phases have been made by the U.S. Senate, U.S. House of Representatives, Department of Justice, Federal Trade Commission, the Committee on Economic Development, and many others.

To provide pertinent information for public and private inquiries, the American Finance Conference (national association of independent sales finance companies) has conducted an intensive research program since 1959.

The AFC research effort has developed a great body of original material about the industry. This has been developed by members of the AFC, the association's staff, and independent academic authorities. The study also has brought new perspectives to past research by other sources.

This "White Paper" (which reflects much AFC research data in addition to that which is included), is presented with intention of proving valuable to all who are concerned with the issues discussed herein.

**Published by the American Finance Conference, Inc.**

A 'WHITE PAPER'  
ON  
AUTOMOBILE FINANCING

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I. MONOPOLY POWER IN SALES FINANCING AND AUTO MANUFACTURING

II. FACTORY-FINANCING SUBSIDIES - THEIR MOBILITY AND IMPACT

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Outline and Summary:

MONOPOLY POWER IN SALES FINANCING AND MANUFACTURING

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Borrowed funds are basic to successful finance company operation.	1
Banks, though most were reluctant, were the first source of finance company borrowings.	1
Short-term debt (bank borrowings) predominated, equities were relatively big in pre-World War II period.	1
Subordinated debentures, introduced by a then small finance company in 1936, were destined to make profound changes in structure of debt after World War II.	1
Subordinated debentures solved the problem of absorbing the higher level of federal income tax, and at the same time maintaining low rates and normal profits.	3
Subordinated debentures offered these basic characteristics:	
1. Subordinated to senior borrowing, they qualify as capital and thus broaden the borrowing base, both for short-and long-term credit.	3
2. Classified as debt, its cost is tax-deductible as interest, unlike the cost of dividends on equity capital.	3
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GMAC's typical leverage in ratio of risk assets to common equity gives it these advantages in capital costs passed on to the consumer, as compared to companies with 1/2 and 1/4 as much leverage, respectively:

2.08% per annum; 6.24% per annum

8-9

With the advent of the 52% federal income tax for corporations, leverage has become competitively decisive.

9

External Influences Regulating and Affecting the Structure of Sales Finance Companies

9

Independent sales finance companies could not have, if they wished, approximated GMAC's leverage. Life insurance companies and banks (key sources of funds) would not have permitted it.

9

Key large-city banks, as first source of funds for sales finance companies, set up standards of sales finance company operation.

9

Banks impose real limitations on independents. Comparisons of financial structure, however, show that GMAC has a unique special privilege.

15

GMAC is different because of ownership by GM, with its matchless economic power as borrower, depositor and investor.

15

Explanation of composite sales finance company ratios and standards:

15

Compensating balance in bank accounts

16

This balance is a part of the loan which the borrower cannot use, but on which he must pay interest. Typically, it can increase the real interest rate by 25-40% over stated interest.

16

Absence of such requirement for long-term funds adds to their attractiveness.

16

Open market borrowings, though not affected by compensating balance, are limited to percentage of short-term borrowings and must be covered by unused bank lines.

16

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17

Automobile wholesale

17

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(Period to liquidate senior debt)

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Limit on open market borrowing

Difference between GMAC and independents.

21

Life insurance companies and other institutions rely on banks, acting in their own interests, to police finance company operations and financial position.

23

GMAC has been immune to restrictions (GM deposits likely have some influence)

23

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Pyramiding of debt makes lower rate possible; attracts "prime" contracts, leaving lesser quality, more-costly-to-service contracts for competitive finance companies.

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3. Ability and willingness of manufacturers to organize captive finance companies and pyramid debt to extreme.	
4. Legal prohibition against factory ownership of finance companies.	
GMAC can borrow more in subordinated debt because of GM ownership. This advantage is multiplied by greater leverage in senior borrowings as well.	29
<u>THE AUTOMOBILE SALES FINANCE DICHOTOMY AND THE AUTOMOBILE MANUFACTURING MONOPOLY POWER</u>	31
The auto sales finance business, distinguished from the general sales finance business, is a distinct dichotomy. One side is GMAC, confining its services to GM dealers; the other side is all other sales finance institutions, competing for the financing of other dealers. The distinct advantages of GMAC threaten the precarious dividing line between unfulfilled and fulfilled monopoly power.	31



GMAC's unique advantages, through abnormal pyramiding, make it impossible for a manufacturer without a finance company to compete effectively with GM.	Page No. 31
Ford's statement to the U.S. District Court in 1946 discloses the prime use of GMAC: <u>Maximizing factory sales and profits to the disadvantage of competitors.</u>	31-33
Ford statement shows the disadvantage as centering in two major areas: 1. "Sales appeal." 2. "Serious handicap..in the market for new dealers."	33
Elaboration of the "Sales Appeal" advantages held by GM through GMAC.	33
Elaboration of "Competition for Dealers" advantages held by GM.	33-34
GM dealer receives five incomes controlled by GM and its subsidiaries, <u>an exclusive GM privilege</u> : These are: 1. Markup on car. 2. Normal finance reserve. 3. Overage or "pack" in finance charge. 4. Insurance commissions. 5. Insurance repairs and replacements.	34
Besides being tied to a single source for all five sources of income, GM dealer is further controlled by factory by delayed nature of two of these incomes.	34
Divorcement of GM and GMAC would leave factory in control of only one of the five dealer incomes, and put all manufacturers on equal footing.	35
THE TRUTH ABOUT FINANCING RATES	36
GM's and Ford's concern about low financing costs for consumers should be evaluated in the light of their actual practice.	36
Dealer negotiates retail rate with consumer. In separate transaction, finance company buys retail contract from dealer at set discount rate.	36
GMAC and Ford Motor Credit Co. finance plans both provide for variable retail rates -- not a uniformly low rate, nor lowest possible rate.	36
<u>GMAC Defines Finance Pack</u>	36
GMAC in 1938 defined finance "pack" as charge to consumer of a "greater time price differential than the GMAC discount cost the dealer."	36-37
Reported 50 cents per \$100 differential between GMAC's and independents' discount rates is small compared to maximum reserve of \$2.65 per \$100 on new cars in GMAC rate chart.	37
<u>Factory Company Introduced Reserve</u>	37
GMAC introduced dealer participation in the finance charge, which has led to distortions of finance rates to make up to the dealer for part of the profit he should make on the sale of the car.	37
A GMAC representative admitted to an NRA official in 1934 that the reserve (introduced by GMAC in 1925) came into the competitive picture before the bonus (which independents used as a counter-weapon).	37
Alfred P. Sloan, Jr., as president of GM, candidly stated in 1933 that "any appreciable excess" over actual repossession losses was "unfair to other finance companies."	37
<u>Size of GMAC Reserve Payments</u>	37-39

	<u>Page No.</u>
GMAC's president in 1956 told the Senate that GMAC paid dealers \$5,901 in reserves for each new car actually repossessed in 1952. Amounts for other years, 1950-55 are listed.	39
GMAC's president said "the dealer's participation in the finance charge has been considerably more than sufficient to absorb losses taken on the resale of new-car repossessions during the past six years."	39
Such figures do not, however, represent an unfair net profit for the dealer, because dealers have had a struggle to net an over-all profit on operations.	39
GMAC's reserve figures show that <u>a substantial part of the true price of an automobile is submerged in the finance charge -- because of practices initiated and perpetuated by the largest factory in particular.</u>	39
<u>Factory Loading of Dealers</u>	39
As auto manufacturers moved into period of expansion and over-production in late 1920's, they adopted a sales policy of loading dealers with heavy inventories. This led to excessive trade-in allowances by dealers on used cars. To offset great losses, dealers increased finance charges to buyer to include larger participation for themselves.	39
Samples collected by Federal Trade Commission showed that "packs allowed by factory-preferred companies took, on the whole, a larger fraction of total charges than did those allowed by other companies."	39
<u>Factory-Picked "Stimulators"</u>	41
To help enforce their quota demands, major factories appoint key dealers in strategic locations to set the competitive pace for other dealers. Their name in the trades "Stimulators."	41
Stimulators, with seemingly generous deals, force the majority of other dealers to follow suit to varying degrees and to depend unduly on financing income, or suffer in sales results, and rating by the factory.	41
President of National Automobile Dealers Association tells case history of a stimulator.	41
<u>GMAC Finance Rates are Not Low For Its Kind of Service</u>	41
For the task it performs, GMAC is a relatively high-rate company. On its financial pyramiding alone, GMAC should be able to offer a differential of \$1 per \$100 over independents in dealer discount rate, whereas alleged differential is only 50 cents per \$100.	41-42
Other exclusive GMAC benefits should make the difference even greater. Among these advantages are: 1. Taking "cream" of GM dealer's contracts. 2. Requiring dealer, under recourse arrangements, to assume responsibility for collectability. GMAC official policies on these are cited.	42
Partly due to such policies, GMAC can operate with fewer offices than independents. In 1959-60, independents had ratio of 1 office to 8 dealers (non-GM); GMAC had ratio of 1 office to 53 GM dealers.	42
<u>GMAC Discount Rate Does Not Cover All Costs</u>	43

GMAC discount rate does not cover the added costs shifted to GM dealers. To reduce or eliminate the added costs and shift them to an independent finance company, might well be worth the reported 50 cents per \$100 differential.	Page No. 43
<u>Wholesale Rates</u>	43
Ford dealers using independent finance company wholesale financing were said to be at $\frac{1}{2}\%$ disadvantage as against GMAC rates. Examination shows, however, that of the 80 dealers surveyed, 74 were borrowing at or below the effective prime rate paid by prime businesses of the country.	43
GM has stated that GMAC wholesale financing is profitable. This statement is challenged. The profit is to GM in competitive squeeze on other manufacturers.	43-44
Subsidized rates by factory, besides making it easier to load dealer inventories, also provide exclusive advantage in sustaining a make and its dealers in slow-selling periods. Other dealers must generate sufficient retail business to enable independent finance companies to provide below-cost wholesale credit. Otherwise, they must get higher-priced credit, worsening their plight.	44
Because independents serve a cross-section, including higher proportion of slow-moving cars, their cost factors are all different from GMAC's. Therefore, their rates must show a difference. In a free market, without factory subsidy, dealers of all makes would have equal financing conditions.	44-45
FACTORY-FINANCED COMPANIES ARE INCOMPATIBLE WITH TRULY COMPETITIVE AUTOMOBILE INDUSTRY	46
The potency of GM's finance company in holding a monopoly power over dealers and the industry is clearly visible in a summation which Ford presented to the U.S. Supreme Court in 1946. The passage of years has magnified the exclusive advantage. Ford's statements of 1946 quoted.	46
Subordination of retail and wholesale practices to factory sales and profits is both expressed and implied in statements by Ford and GMAC.	46-47
The only effective remedy for equalizing competition among auto manufacturers is contained in Ford's statements: Divorcement had to be imposed on <u>all manufacturers to substantially the same extent and at nearly the same time.</u> Otherwise public benefit would be nullified by public injury through disturbance of competitive conditions as between the manufacturers.	47
Ford's subsequent entry into financing does not make <u>competition less unequal for those manufacturers who cannot do so.</u> And GM's and Ford's position stands as a barrier to any possible new manufacturers.	47
George Romney of American Motors, a hardy competitor, has said new births are needed in the industry for adequate competition, or ultimate result "could be that but a single company would remain."	47
Factory-financing concentration threatens further administered price control in autos and financing, plus unsound financial pyramiding.	47
On other hand, GMAC can operate as an independent, as it admits. This would add financial support to other manufacturers. All dealers could freely choose the financing service that best meets their needs.	47-48

# I. MONOPOLY POWER IN SALES FINANCING AND AUTO MANUFACTURING

## HISTORY OF THE FINANCIAL STRUCTURE OF SALES FINANCE COMPANIES.

It is axiomatic that a sales finance company, to operate profitably or at all, must supplement its capital in substantial multiples with borrowed funds.

In the early days, borrowed funds were most difficult and expensive to obtain. Banks were wary of this new "consumer credit," nearly all avoided any direct participation, and only the most progressive offered lines of credit, in modest amounts, to this new type of financial intermediary. In spite of their initial inhibitions, however, commercial banks did develop into the principal supplier of the borrowed funds for sales finance companies.

The establishment of many sales finance companies and their rapid growth after World War I and the concurrent expansion of the motor vehicle industry could not have taken place as they did if sales finance companies had not qualified for sizable volume of bank loans.

Table II-13 sets out the structure of liabilities of selected sales finance companies covering the prewar period of 1924 to 1939, taken from the study of Wilbur C. Plummer and Ralph A. Young, Sales Finance Companies and Their Credit Practices (National Bureau of Economic Research, New York, 1940).

Particular attention is directed to the conservative "leverage" on equity funds. (Leverage is the ratio of borrowings to capital funds -- a "yardstick" developed by the bank creditors.) Equity funds during this period, except for isolated cases, consisted wholly of the capital stock and surplus of the companies; subordinated and junior subordinated debentures were not as yet elements of debt, nor of "capital funds."

The innovation of subordinated debenture bonds was successfully introduced in 1936 by a then relatively small company. "So far as can be determined, General Finance Corporation (now of Evanston, Ill.) was the first sales finance company to sell publicly a subordinated debenture by its offer in March, 1936, of \$750,000 of 5 percent, ten-year debentures."<sup>1</sup> While this occurred in the prewar period, subordinated securities did not come into general use or acceptance until sometime after World War II, almost 15 years later.

Because of this pioneering by a then small company, the financial structure of finance companies underwent profound historical changes after the war, as against prewar.

Table II-14 discloses the structure of liabilities of selected finance companies, covering the postwar period of 1946 to 1956, taken from the study of John M. Chapman and Frederick W. Jones, "Finance Companies: How and Where They Obtain Their Funds" (Graduate School of Business, Columbia University, New York, 1959). This table is constructed from information

1 Journal of Finance, Vol. X, No. 1, March 1955.

TABLE II - 13  
DEBT AND NET WORTH OF SELECTED SALES FINANCE COMPANIES, 1924-39  
In Percent of Total Liabilities or of Total Assets

	National Companies			Regional Companies			Local Companies		
	Short-Term Debt	Long-Term Debt	Net Worth (Equity Funds)	Short-Term Debt	Long-Term Debt	Net Worth (Equity Funds)	Short-Term Debt	Long-Term Debt	Net Worth (Equity Funds)
1924	68.1	--	22.9	52.8	--	36.9	52.7	--	33.0
1925	66.1	2.3	21.1	54.8	10.5	25.4	60.3	1.1	27.9
1926	61.5	11.5	18.6	45.3	18.3	26.5	59.0	.9	27.0
1927	49.0	22.0	20.5	43.6	15.0	31.9	56.6	--	32.2
1928	53.6	16.3	20.4	*50.6	* 8.7	*31.0	50.3	--	31.6
1929	50.5	13.3	25.8	42.4	9.1	38.8	57.8	1.0	31.6
1930	43.7	13.4	29.8	*33.4	* 3.7	*50.6	52.1	1.2	37.2
1931	40.6	14.3	33.6	35.5	8.8	38.6	55.5	.9	30.7
1932	14.7	16.2	52.6	20.3	9.7	55.9	38.4	1.3	51.6
1933	35.5	7.9	41.6	33.0	5.9	47.6	50.9	.6	46.5
1934	46.1	4.7	33.6	41.1	3.6	40.0	51.9	.6	38.6
1935	51.1	5.0	27.8	55.0	1.9	30.6	61.3	.5	29.2
1936	45.3	17.7	20.4	51.7	8.0	28.5	60.5	2.6	27.9
1937	52.5	17.9	18.3	56.1	6.8	26.5	62.6	1.5	27.7
1938	33.8	23.9	27.8	39.3	9.8	40.3	52.4	1.7	36.6
1939	41.5	16.9	23.6	36.9	5.1	37.3	57.2	5.1	32.2

\* Based on data for 4 companies only.

Notes: Data for 1924-33 obtained from National Credit Office, Inc., on companies using commercial paper; data for 1934-39 direct from companies. Percentages do not add to 100; the difference represents corporate reserves. Composition of groups: National companies -- General Motors Acceptance Corp., Commercial Investment Trust Inc., and Commercial Credit Co. for all years, Universal Credit Corp. from 1928; regional companies -- Associates Investment Co., National Bond and Investment Co., Pacific Finance Corp. of California for all years, Maytag Acceptance Corp. from 1927; local companies -- sample of 13 for 1924-33, of 40 for 1934-38 and of 24 for 1939.

Source: Wilbur C. Plummer and Ralph A. Young, Sales Finance Companies and Their Credit Practices, National Bureau of Economic Research, New York, 1940, p. 62.

contained in Tables 3 and 14\* of the Chapman-Jones study, but with the items ratioed in the same fashion as in Table II-13 herein; that is, related to total liabilities (or total assets) instead of to total debt. This conversion provides an easier comparison of the two periods.

The successive postwar increases in rates of federal income tax created problems of very serious impact upon sales finance companies: How to absorb increased postwar costs, including the tax, while (1) preserving the availability of the low prevailing rates of finance charges to dealers and their customers; and (2) maintaining normal profits for the rise capital they required. To meet these problems revolutionary innovations were introduced, both in operating techniques and in financial structure.

The subordinated debenture proved to be one of the most important new tools for tackling the cost-rate-profit problems. It possessed two valuable characteristics:

- (1) Since it was subordinate to all other senior borrowings in order of liquidation priority, it combined with the capital net worth of the company to broaden the "capital base," or "borrowing base," upon which to construct senior debt. This broadened borrowing base soon became generally accepted by both senior long-term and short-term creditors as equal to the former borrowing base of strictly orthodox liquid net worth, or equity funds.
- (2) Since subordinated debt qualified as debt because of its definite maturities, the interest paid on subordinated debentures was an expense deductible for federal income tax purposes--as dividends on capital were not.

In 1948, the year before the first substantial use of subordinated debentures, total long-term debt of the five largest companies equalled 21.2% of total liabilities (Table II-14). By 1955 this had doubled, to 42.2%. Short-term debt had decreased slightly (from 47.3% to 34.7%) while net worth had decreased relatively more (from 16.3% to 9.6%). However, with subordinated debt augmenting net worth, the capital base for borrowing stayed about the same--18.4% in both 1948 and 1956, the low being 17.4% in both 1952 and 1955.

In the prewar period from 1924 to 1939 (Table II-13), the low capital base for the three largest companies was in 1937 when equity funds guaranteeing senior borrowing amounted to 18.3%. Postwar, the largest companies' lowest capital base was about the same; but net worth in 1937 was just about twice as high, relatively, as in 1955 (18.3% vs. 9.3%)\*\*. The big difference in net worth reflects the substitution of subordinated debentures for equity capital in the borrowing base.

This meant that the same volume of business could be done on relatively much less capital. It also meant that if the same amount of net income could be realized, significantly more profits could be earned per dollar of common stock. An even more important possibility was that if a larger volume of business could be attracted, the same profit on common equity could be realized, even at substantially reduced rates of finance charges.

It followed, then, that those companies that could pyramid the greatest extension of "debt structure" could enjoy competitive advantages denied to those less fortunate. These latter--usually smaller and less influential with sources of funds, though they were demonstrably as efficient and relatively as credit worthy--found themselves limited by creditors to more conservative standards and thereby were at a marked disadvantage both as to profits and rates.

From the innovation introduced by one small company, changes of revolutionary proportions--and disproportions--have occurred in the liabilities structure of sales finance companies.

In their study, Drs. Chapman and Jones comment on this phenomenon:

"Several basic changes have taken place in the financial structure of sales and con-

\* The original tables appear at the end of this section.

\*\* 1937 and 1955 were peak auto sales years for their periods.

TABLE II - 14  
NET AND NET WORTH OF SELECTED SALES FINANCE COMPANIES BY AMOUNT AND SIZE OF COMPANY, 1946-1956  
 In Percent of Total Liabilities or of Total Assets

## FIVE LARGEST SALES FINANCE COMPANIES

Year	Total Liabilities (\$ Millions)	Percent of Total			Net Worth Equity Funds	Net Worth and Subord. Debt (Capital Base)
		Short-Term Debt	Long-Term Debt	Subordinated		
1946	1,153	41.1	8.4	.7	26.6	27.3
1947	1,792	52.3	8.5	2.4	18.1	20.5
1948	2,380	47.3	19.1	2.1	16.3	18.4
1949	3,043	46.0	16.4	6.7	14.5	21.2
1950	3,978	45.4	17.9	5.9	13.1	19.0
1951	4,121	46.3	18.9	5.7	13.2	18.9
1952	4,926	50.7	15.8	5.6	11.8	17.4
1953	5,988	38.6	28.1	8.1	10.8	18.9
1954	5,951	35.0	28.3	9.9	11.2	21.1
1955	8,464	40.0	30.1	8.1	9.3	17.4
1956	8,903	34.7	33.4	8.8	9.6	18.4

## FIVE MEDIUM-SIZE SALES FINANCE COMPANIES

Year	Total Liabilities (\$ Millions)	Percent of Total			Net Worth Equity Funds	Net Worth and Subord. Debt (Capital Base)
		Short-Term Debt	Long-Term Debt	Subordinated		
1946	55	51.1	0.	13.3	26.6	39.9
1947	62	59.2	.27	12.2	18.6	30.8
1948	120	58.1	1.9	9.4	14.8	24.2
1949	127	53.4	4.9	8.3	16.1	24.4
1950	161	52.8	8.2	8.2	14.7	22.9
1951	177	54.9	9.0	7.8	11.9	19.7
1952	210	53.6	6.6	9.0	15.1	24.1
1953	236	52.1	10.6	9.3	14.9	24.2
1954	253	50.2	11.7	9.4	16.5	25.9
1955	375	50.8	12.1	11.6	13.2	24.8
1956	396	44.0	18.2	12.9	14.8	27.7

## TWENTY SMALLER SALES FINANCE COMPANIES

Year	Total Liabilities (\$ Millions)	Percent of Total			Net Worth Equity Funds	Net Worth and Subord. Debt (Capital Base)
		Short-Term Debt	Long-Term Debt	Subordinated		
1946	53	52.7	1.3	2.5	32.2	34.7
1947	85	59.3	4.7	2.2	23.2	25.4
1948	116	59.6	0.	7.6	19.9	27.5
1949	139	59.7	.6	7.6	19.2	26.8
1950	182	61.0	1.9	6.3	17.5	23.8
1951	202	61.5	1.8	6.4	17.9	24.3
1952	231	60.0	2.9	7.2	17.8	25.0
1953	257	60.1	3.5	8.5	17.0	25.5
1954	266	59.4	4.8	8.2	18.6	26.8
1955	341	60.4	4.7	9.3	16.1	25.4
1956	390	55.1	9.4	9.7	16.0	25.7

Source: John H. Chapman and Frederick W. Jones, Finance Companies: How and Where They Obtain Their Funds (Graduate School of Business, Columbia University, New York, 1959), pp.40, 41.

Note: For easier comparison with data in Table II - 13, net worth is related herein to total liabilities, using data from the original source, which related net worth to total debt.

sumer finance companies in the relationship of net worth to borrowed funds. Despite the fact that the amount of net worth has increased substantially in the aggregate, it has declined drastically in comparison with the amount of borrowed funds since the close of World War II. Net worth of the five largest sales finance companies expressed as a percent of total funds\* declined from 34.6 percent in 1946 to 11.1 percent in 1956. The general trend for the smaller finance companies (both sales and consumer) was similar to that of the largest companies but the decline was less marked. Despite the tendency to fluctuate slightly in some cases, the relative decline in net worth was gradual and continuous for the most part.

"The declining trend in net worth relative to total borrowing of 'total funds' has been due to a number of factors. In some cases, especially for the smaller companies, the element of control was involved. A sale of common stock publicly might mean a loss of control by the existing management. Debt was regarded as preferable under such circumstances. Secondly, interest on borrowed funds could be regarded as an operating expense and deducted in computing income taxes whereas dividends could not be so considered. In the third place, it has been less expensive generally to borrow funds than issue and sell stock in the market.

"The largest sales finance companies increased their debt relative to net worth much more than did the smaller and medium sales finance companies."

It is significant that Drs. Chapman and Jones in their presentation pointed out the important difference between the net-worth-to-debt ratios that distinguished larger companies from smaller ones. Such pyramiding gives the larger companies marked competitive advantages.

However, like so many other comparisons in studies of the sales finance business, the two studies that provide the basis for Tables II-13 and II-14 herein have the weakness of obscuring the most striking comparison because they combine the large companies in one classification. When the one dissimilar company\*\* -- with its unique size and characteristics -- is isolated, it is seen as decidedly unlike other large companies in net worth to debt. Furthermore, it is seen that there is a greater difference between the factory-owned company and the large independents than between large, medium and small independents. A separation which shows the contrast between the captive and the largest independents in the postwar years is provided in Tables II-15 and II-16 herein. For comparison with medium and small companies, see Table II-14.

Thus a most important change in the financial structure of sales finance companies has taken place since the war; namely, the percentage of net worth to total liabilities -- and one company has changed far more than the industry. The increased pyramiding on net worth was made possible by the simple substitution of subordinated debenture bonds for an equal amount of equity capital.

#### The Competitive Impact

While the degree of postwar pyramiding (or leverage) has had no influence whatsoever on the operating costs of a matured finance company, its impact in the realization of profits, abridgement of the competitive effect of income tax, and at the same time the lowering of the finance charge is revolutionary magic.

The effect of debt leverage on items of cost can be simply illustrated. In the following illustrations, a profit objective of 20% return, after federal income tax, on common equity

\* "Total funds" referred to here are total formal debt plus net worth instead of total liabilities and net worth as used in Tables II-13 and II-14 herein.

\*\* General Motors Acceptance Corporation.



TABLE II - 15  
DEBT AND NET WORTH, CAPTIVE COMPANY (GMAC) AND FOUR LARGEST INDEPENDENTS, 1948-1958  
 Amounts, and Percentages of Total Liabilities

<u>Captive Sales Finance Company</u>				<u>Four Largest Independent Sales Finance Companies</u>			
<u>Year</u>	<u>Total Liabilities (\$ Millions)</u>	<u>Net Worth (\$ Millions)</u>	<u>Net Worth- % of Total Liabilities</u>	<u>Total Liabilities (\$ Millions)</u>	<u>Net Worth (\$ Millions)</u>	<u>Net Worth- % of Total Liabilities</u>	<u>Ratio of 4 Indep. Cos. Net Worth Pctg. To Captive Co.'s Net Worth Pctg.</u>
1948	614	92	15.	1,900	303	16.	1.07
1949	1,115	98	8.8	2,250	355	15.9	1.81
1950	1,598	139	8.8	2,556	394	15.4	1.75
1951	1,492	130	8.7	2,821	424	15.	1.72
1952	1,802	141	7.8	3,368	449	13.4	1.72
1953	2,568	154	6.	3,689	492	13.3	2.22
1954	2,651	166	6.3	3,295	502	15.2	2.41
1955	3,800	231	6.1	4,682	555	11.8	1.93
1956	4,033	249	6.2	4,823	603	12.5	2.07
1957	4,397	273	6.2	5,286	656	12.4	2.00
1958	3,881	295	7.6	4,754	712	15.	1.97

Source: GMAC reports; John H. Chapman and Frederick W. Jones, Finance Companies: How and Where They Obtain Their Funds (Graduate School of Business, Columbia University, New York, 1959), pp. 40, 84.

Note: For consistency with other tables in this discussion, net worth is related herein to total liabilities, using data from Chapman and Jones, who related net worth to total debt.

TABLE II - 16  
SUBORDINATED DEBENTURES, CAPTIVE COMPANY (GMAC) AND FOUR LARGEST INDEPENDENTS, 1948-1958  
 Amounts, and Percentages of Total Liabilities

<u>Captive Sales Finance Company</u>					<u>Four Largest Independent Sales Finance Companies</u>				
<u>Year</u>	<u>Subordinated Debentures</u>		<u>Net Worth</u>	<u>Net Worth Plus Subordinated Debentures (Capital Base)- % of Total Liabilities</u>	<u>Year</u>	<u>Subordinated Debentures</u>		<u>Net Worth</u>	<u>Net Worth Plus Subordinated Debentures (Capital Base)- % of Total Liabilities</u>
	<u>Amount (\$ Millions)</u>	<u>% of Total Liabilities</u>				<u>Amount (\$ Millions)</u>	<u>% of Total Liabilities</u>		
1948	None	0.0	0.0	15.0		51.6	2.7	17.0	18.7
1949	75	6.7	76.5	15.5		132.5	5.8	37.3	21.7
1950	100	6.3	71.9	15.1		137.5	5.4	34.9	20.8
1951	100	6.7	76.9	15.4		139	4.9	32.8	19.9
1952	100	5.6	70.9	13.4		177.8	5.3	40.0	18.7
1953	245	9.5	159.1	15.5		238	6.5	48.4	19.8
1954	275	10.4	165.7 *	16.7		295	9.0	53.8	24.2
1955	350	9.2	151.5	15.3		325.8	7.0	58.7	18.8
1956	375	9.3	150.6	15.5		436.5	9.0	72.4	21.5
1957	375	8.5	137.4	14.7		481.8	9.1	73.4 *	21.5
1958	379.7	9.8	128.7	17.4		473.6	10.0	66.5	25.0

\*High for period.

Source: GMAC reports; John H. Chapman and Frederick W. Jones, Finance Companies: How and Where They Obtain Their Funds (Graduate School of Business, Columbia University, New York, 1959), pp. 40, 84.

Note: For consistency with other tables in this discussion, figures are related herein to total liabilities, using data from Chapman and Jones, who related them to total debt.

for average outstanding receivables is assumed, and interest cost of 4% is assumed.\*  
(Operating costs, because leverage does not affect them, are omitted from consideration to simplify the illustrations.)

In the first illustration, a company operating without any debt would have the following cost-of-funds charges to pass on to its customers (plus operating costs):

Illustration 1 -- No Debt

Interest on debt	None
Profit, after tax, on total common equity	20.00%
Income tax at 52% (52/48 of 20%)	21.67%
Per-unit cost of funds per annum	41.67%

- - -

Assume now the introduction of debt of 9 times common equity, or a leverage of 9 to 1:

Illustration 2 -- \$9 Debt to \$1 Capital

Interest on 9 units of debt at 4% (9x4%)	36.00%
Profit, after tax, on total common equity	20.00%
Income tax on profit	21.67%
Total cost of funds for 10 units (9 to 1)	77.67%
Per-unit cost of funds (77.67% ÷ 10)	7.76%

- - -

With a debt of 19 times common equity, or a 19 to 1 leverage, this picture emerges:

Illustration 3 -- \$19 Debt to \$1 Capital

Interest on 19 units of debt at 4% (19 x 4%)	76.00%
Profit, after tax, on total common equity	20.00%
Income tax on profit	21.67%
Total cost of funds for 20 units (19 to 1)	117.67%
Per-unit cost of funds (117.67% ÷ 20)	5.88%

- - -

Thus, in Illustration 1, with no debt, the per-unit cost of funds to be paid by the customer is 41.67%. In Illustration 2, with a 9 to 1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 7.76%. And in Illustration 3, with a 19 to 1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 5.88%.

It is clearly demonstrated that borrowing alone--with all other variables excluded--brings a marked advantage in reducing cost of funds including income tax, quite apart from any differences in interest rates and without any impairment of profit.

Although it has not been commonly used, the risk asset ratio of the finance company is probably a more important ratio than its borrowing ratio, for it more adequately reflects the total competitive impact of the "mix" of total funds used. Of the funds borrowed, only that part invested in risk assets, which earn, contributes to the advantage of leverage in common equity. Borrowed funds idled by required compensating balances depress the effective leverage. In the above illustrations, borrowing ratios must be enough higher than those therein expressed to provide for working and compensating balances and other miscel-

\* General Motors Acceptance Corporation's average return for 1954-59 was 20.4% on common net worth, after tax--which corresponds to General Motors "target" profit of 20%, but is marked higher than other finance companies' return. Interest costs of GMAC for 1957 were 3.85%; these (rounded) are used here, since GMAC is strictly a sales finance company.

laneous items in order to produce the proportionate ratios of earning-assets to common equity. However, the borrowing ratio was used in the illustrations because it is the method conventional to the industry.

The risk asset ratio method more nearly reflects the increased costs of money due to compensating balance requirements, the benefits resulting from the absence of compensating balance requirements on long-term senior money, and other influences of financial management. These differences in cash balance requirements can be seen by examination of Table II-17.

This table sets out the risk asset (or earning asset) ratio to common equity and the percentages of risk assets, cash and other assets to total assets for the classified companies.

#### How Pyramiding Affects Rates

Whether comparative ratios are expressed in terms of risk assets or in liabilities, they reflect an increasing competitive advantage in the range of rates that can be offered as the pyramid grows higher.

The competitive advantage of pyramiding appears more clearly by elaboration of the 19 to 1 and 9 to 1 examples previously cited and the addition of a 4 to 1 ratio, to represent small companies. The 19 to 1 ratio is double (plus one) the 9 to 1, and the latter in turn holds a comparable advantage over the 4 to 1. The following shows how this advantage makes a difference in spreading the cost of profit and income tax in the rate charged.

#### 4 to 1 Ratio

Profits:	20.00% - 5 units of funds	4.00% per unit of funds
Tax:	21.67% - 5 units of funds	4.33% per unit of funds

Per-unit profit-and-tax charge that must be added to interest and operating costs

8.33% per annum

- - -

#### 9 to 1 Ratio

Profits:	20.00% - 10 units of funds	2.00% per unit of funds
Tax:	21.67% - 10 units of funds	2.16% per unit of funds

Per-unit profit-and-tax charge that must be added to interest and operating costs

4.16% per annum

- - -

#### 19 to 1 Ratio

Profits:	20.00% - 20 units of funds	1.00% per unit of funds
Tax:	21.67% - 20 units of funds	1.08% per unit of funds

Per-unit profit-and-tax charge that must be added to interest and operating costs

2.08% per annum

- - -

H

Favorable per annum differential over 9 to 1 company: 2.08%  
Favorable per annum differential over 4 to 1 company: 6.25%

- - -

Thus it can be noted that leverage gives the 19 to 1 company a cost advantage over the 9 to 1 company about equal to the latter company's tax cost -- producing a competitive position for the 19 to 1 company equivalent to income tax exemption, and a far greater differential over the 4 to 1 company.

Leverage has always been an important tool of financial management, but since World War II and the imposition of the 52% income tax rate, it has become competitively decisive in the time sales financing business. It may be stated unequivocally that primary credit institutions, such as commercial banks and life insurance companies, to the extent that they waive or diminish for a special type of finance company the standards applied to all other such companies, can and do change the flow of funds and of business--not only among finance companies, but between auto manufacturers who own captive companies and those who do not.

While size has considerable influence on pyramiding, factory ownership in this field has had the more potent influence. And the proportions of the singular pyramiding of the captive company are such that a serious question arises as to whether other auto manufacturers can survive without either imitating the example or finding some other means to remove the intolerable disadvantage.

As one alternative, the manufacturer might press independent finance companies to imitate the pyramiding. However, it is improbable that banks and insurance companies would permit independents to build a comparable pyramid. Moreover, it would be of dubious economic and credit soundness, even if permitted.

The extreme pyramiding attained by the captive automobile finance company has been possible only because of its apparent immunity from the conventional standards regulating all other finance companies with regard to:

- 1) relationship of subordinated debt to net worth, and
- 2) relationship of senior borrowing to capital base.

It can be said, without qualification, that independent sales finance companies could not have approached, if they had so wished, the risk asset ratios realized by GMAC since 1952. The leading life insurance companies, who policed subordinated debenture bond ratios, and the key banks, who policed senior borrowings, would not have permitted this.

#### EXTERNAL INFLUENCES REGULATING AND AFFECTING THE STRUCTURE OF SALES FINANCE COMPANIES

It is a classical principle that financial institutions be regulated through some coherent system embodying safety, liquidity and economic stability, including controls over a sudden increase or decrease in the quantity or quality of credit. Commercial banks for example, are regulated by government agencies which apply well-defined ratios as to reserves, capital funds, risk assets, rediscount privileges, and other factors. While these may vary between classes of banks, depending on the "reserve city" versus "country" bank status, the administration of the regulations and ratios are uniform, without discrimination as to size or ownership status.

Sales finance companies also are subject to regulation by external agencies--principally financial institutions that are sources of their borrowed funds. Before World War II, as previously stated, commercial banks were almost the sole source of borrowed funds. It was to be anticipated that these banks would set up the standards within which sales finance companies were to borrow and to operate. The early ratios and regulations were developed by a very few key banks in the larger reserve cities. Other banks, including banks of substantial size and even banks located in reserve cities, followed the leadership of those key banks that had trained their officers to develop tested standards by which to measure

TABLE II - 17 (1957-59)  
ASSETS BY TYPE AND RISK ASSET RATIO TO COMMON EQUITY,  
SELECTED SALES FINANCE COMPANIES, GROUPED BY SIZE, 1954-59

ASSETS	Group No. 1		Group No. 2		Group No. 3		Group No. 4		Group No. 5		Group No. 6		Group No. 7	
	Cash	% of Total Assets	Cash	% of Total Assets	Cash	% of Total Assets	Cash	% of Total Assets	Cash	% of Total Assets	Cash	% of Total Assets	Cash	% of Total Assets
Year 1957:														
Cash	94.8	3.7	88.2	5.6	89.7	6.2	85.0	11.5	82.9	9.5	82.8	11.8	85.6	10.7
Net Notes Receivable	.3		.4		.2		.2		1.5		.7		.6	
Miscellaneous Current Assets	.6		.7		.4		.3		.5		.4		.2	
Prepaid Expenses	.5		4.1		2.5		1.7		4.4		2.7		1.4	
Investments in Subsidiaries			3.0		1.0		1.3		1.2		1.6		1.5	
Other Non-Current Assets	.1		94.4		93.8		88.5		90.5		88.2		89.3	
Total Risk Assets			100.0		100.0		100.0		100.0		100.0		100.0	
Common Equity														
Total Risk Assets	96.3	5.1	12.5		93.8		10.0		13.3		15.0		14.6	
Risk Asset Ratio to Common Equity	26.3 = 18.9 to 1		94.4 = 7.6 to 1		93.8 = 7.8 to 1		88.5 = 8.9 to 1		90.5 = 6.8 to 1		88.2 = 5.9 to 1		89.3 = 6.1 to 1	
Year 1958:														
Cash	94.6	3.9	86.7	5.2	88.1	6.8	83.7	12.3	82.5	12.0	78.9	13.6	81.7	13.7
Net Notes Receivable	.3		.2		.2		.2		.2		.5		1.7	
Miscellaneous Current Assets	.3		.7		.3		.4		.4		.5		1.4	
Prepaid Expenses	.5		6.2		3.1		2.1		3.4		4.7		1.0	
Investments in Subsidiaries			3.0		1.5		1.3		1.5		1.8		1.5	
Other Non-Current Assets	.1		94.8		93.2		87.7		88.0		86.4		86.3	
Total Risk Assets			100.0		100.0		100.0		100.0		100.0		100.0	
Common Equity														
Total Risk Assets	96.3	6.3	15.8		93.2		11.1		13.6		17.1		17.5	
Risk Asset Ratio to Common Equity	26.3 = 15.3 to 1		94.4 = 6.0 to 1		93.2 = 7.2 to 1		87.7 = 7.9 to 1		88.0 = 5.5 to 1		86.4 = 5.1 to 1		86.3 = 4.9 to 1	
Year 1959:														
Cash	93.9	3.7	87.2	5.6	89.4	6.4	85.6	10.7	86.4	8.8	82.7	11.1	81.7	13.5
Net Notes Receivable	1.0		.3		.2		.2		.2		.4		1.4	
Miscellaneous Current Assets	.7		.8		.4		.4		.2		.5		1.5	
Prepaid Expenses	.5		5.2		2.6		1.9		2.8		3.7		1.0	
Investments in Subsidiaries			3.0		1.0		1.2		1.2		1.6		1.9	
Other Non-Current Assets	.2		94.4		93.6		89.3		91.2		88.9		86.5	
Total Risk Assets			100.0		100.0		100.0		100.0		100.0		100.0	
Common Equity														
Total Risk Assets	96.3	6.2	14.0		93.6		10.5		11.6		15.6		16.0	
Risk Asset Ratio to Common Equity	26.3 = 15.5 to 1		94.4 = 6.7 to 1		93.6 = 7.7 to 1		89.3 = 8.5 to 1		91.2 = 7.9 to 1		88.9 = 5.7 to 1		86.5 = 5.4 to 1	

Source: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1959, as follows  
(for number of companies in each group, see Table II - 21):

Capital Funds		Group
Over \$100 Million	Under \$100 Million	
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	
7	7	

Types of Companies	
National - Factory-Owned	
Semi-national - Independent	
Regional - Independent	
Local - Independent	
Local - Independent	

TABLE II - 15 (Cont'd.)  
ASSETS OF LIFE, ACCIDENT AND SURETY COMPANIES TO COMMON EQUITY  
EXCEPT SALES FINANCING COMPANIES, GROUPED BY SIZE, 1951-53

ASSETS	Group No.						
	1	2	3	4	5	6	7
<b>Year 1951:</b>							
Cash	95.1	88.4	89.3	7.1	82.2	82.5	81.4
Net Notes Receivable	3.5	5.7	1.1	11.8	10.3	13.8	1.2
Miscellaneous Current Assets	.3	.3	.4	.2	.2	.4	1.2
Prepaid Expenses	.4	.4	.4	.3	.4	1.2	.3
Investments in Subsidiaries	4.9	4.9	2.3	2.2	1.3	1.7	.8
Other Non-Current Assets	.2	.3	.8	1.2	1.6	1.6	2.5
Total Risk Assets	96.5	94.3	92.9	88.2	85.7	86.2	86.2
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	6.3	16.7	13.2	12.8	13.2	16.9	18.1
Total Risk Assets	96.5	94.3	92.9	88.2	85.7	86.2	86.2
Risk Asset Ratio to Common Equity	15.3 to 1	5.6 to 1	7.0 to 1	6.9 to 1	6.5 to 1	5.1 to 1	4.8 to 1
<b>Year 1952:</b>							
Cash	3.4	5.9	6.5	10.7	11.0	10.7	12.1
Net Notes Receivable	89.1	85.9	85.9	85.9	84.9	82.4	85.5
Miscellaneous Current Assets	.3	.2	.2	.2	.2	3.0	.4
Prepaid Expenses	.7	.5	.4	.4	.5	2.2	.3
Investments in Subsidiaries	4.4	3.9	1.9	1.8	1.8	2.2	1.1
Other Non-Current Assets	.3	.3	.2	.3	1.6	1.5	1.6
Total Risk Assets	96.6	94.1	93.5	89.3	89.0	89.3	87.9
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	4.8	12.4	11.1	10.4	10.8	13.3	14.7
Total Risk Assets	96.6	94.1	93.5	89.3	89.0	89.3	87.9
Risk Asset Ratio to Common Equity	20.1 to 1	7.6 to 1	8.4 to 1	8.6 to 1	8.2 to 1	6.7 to 1	6.0 to 1
<b>Year 1953:</b>							
Cash	3.1	6.3	6.7	11.2	10.4	10.7	12.3
Net Notes Receivable	89.7	85.7	85.5	85.5	84.8	83.2	83.7
Miscellaneous Current Assets	.3	.2	.2	.2	.3	2.2	1.2
Prepaid Expenses	.4	.4	.4	.4	.4	2.2	.4
Investments in Subsidiaries	4.6	4.6	2.3	1.3	2.8	2.4	.8
Other Non-Current Assets	.2	.2	.2	.3	1.3	1.3	1.2
Total Risk Assets	96.9	93.7	93.3	88.8	89.6	89.3	87.7
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	5.0	12.9	11.1	10.3	12.5	13.3	15.7
Total Risk Assets	96.9	93.7	93.3	88.8	89.6	89.3	87.7
Risk Asset Ratio to Common Equity	19.4 to 1	7.3 to 1	8.4 to 1	8.6 to 1	7.2 to 1	6.7 to 1	5.6 to 1

Source: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1959, as follows  
(for number of companies in each group, see Table II - 21):

Group	Capital Funds	Type of Companies
1	Over \$500 Million	National - Factory-Owned
2	\$250-500 Million	National - Independent
3	\$50-250 Million	Semi-national - Independent
4	\$15-50 Million	Regional - Independent
5	\$5-15 Million	Regional - Independent
6	\$1-5 Million	Local - Independent
7	\$250,000 or Less	Local - Independent

TABLE II - 17 (1951-53)  
ASSETS BY TYPE AND RISK ASSET RATIOS TO COMMON EQUITY.  
SELECTED SALES FINANCE COMPANIES, GROUPED BY SIZE, 1945-50

ASSETS	Group No. 1	Group No. 2	Group No. 3	Group No. 4	Group No. 5	Group No. 6	Group No. 7
	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets
Year 1951:							
Cash	92.1	6.0	6.8	83.7	83.4	85.0	87.0
Net Notes Receivable	1.6	1.6	.2	.3	.2	.8	.4
Miscellaneous Current Assets	.7	.4	.3	.4	.4	.2	.2
Prepaid Expenses	.3	4.9	2.2	1.7	.8	1.2	.1
Investments in Subsidiaries	.7	.1	.7	1.1	1.1	1.4	2.0
Other Non-Current Assets	.2	94.0	90.2	87.2	86.1	88.7	89.7
Total Risk Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Assets							
Common Equity	8.2	34.4	12.4	12.1	12.2	12.8	15.9
Total Risk Assets	94.0	34.4	90.2	87.2	86.1	88.7	89.7
Risk Asset Ratio to Common Equity	94.0 = 11.5 to 1	94.0 = 6.5 to 1	90.2 = 7.3 to 1	87.2 = 7.2 to 1	86.1 = 7.1 to 1	88.7 = 6.9 to 1	89.7 = 5.6 to 1
Year 1952:							
Cash	94.4	4.2	7.0	83.1	83.3	84.7	86.6
Net Notes Receivable	.3	87.5	88.7	.3	.2	.8	.5
Miscellaneous Current Assets	.3	.5	.2	.4	.2	.2	.2
Prepaid Expenses	.6	4.5	1.6	1.6	.9	1.3	.1
Investments in Subsidiaries	.2	.1	.7	1.1	1.1	1.4	1.2
Other Non-Current Assets		95.8	91.6	86.7	86.1	88.5	89.1
Total Risk Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Assets							
Common Equity	8.1	13.1	12.1	12.1	12.4	14.0	17.4
Total Risk Assets	95.8	93.0	91.6	86.7	86.1	88.5	89.1
Risk Asset Ratio to Common Equity	95.8 = 11.8 to 1	93.0 = 7.1 to 1	91.6 = 7.6 to 1	86.7 = 7.2 to 1	86.1 = 6.9 to 1	88.5 = 6.3 to 1	89.1 = 5.1 to 1
Year 1953:							
Cash	95.0	3.5	5.7	83.4	83.1	86.1	84.6
Net Notes Receivable	.3	88.8	89.4	.3	.2	.4	1.0
Miscellaneous Current Assets	.3	.4	.2	.4	.2	.2	.4
Prepaid Expenses	.5	4.5	1.9	1.7	.7	1.6	.1
Investments in Subsidiaries	.2	.1	.8	1.2	1.4	.9	1.2
Other Non-Current Assets		96.5	92.7	87.0	85.9	89.2	87.8
Total Risk Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Assets							
Common Equity	6.2	13.1	12.5	12.0	12.7	14.5	18.3
Total Risk Assets	96.5	94.3	92.7	87.0	85.9	89.2	87.8
Risk Asset Ratio to Common Equity	96.5 = 15.6 to 1	94.3 = 7.2 to 1	92.7 = 7.4 to 1	87.0 = 7.3 to 1	85.9 = 6.8 to 1	89.2 = 6.2 to 1	87.8 = 4.8 to 1

Source: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1950, as follows  
(for number of companies in each group, see Table II - 21):

Group

1  
2  
3  
4  
5  
6  
7

Capital Funds

Over \$500 Million  
\$250-500 Million  
\$50-250 Million  
\$1-50 Million  
\$75-125 Million  
\$25-75 Million  
\$5 Million or Less

Type of Corporation

National - Factory-Owned  
National - Independent  
Semi-national - Independent  
Regional - Independent  
Regional - Independent  
Local - Independent  
Local - Independent

TABLE II - 17 (1940-50)  
ASSETS BY TYPE - GROUPED BY COMPANY SIZE  
ASSETS BY TYPE - GROUPED BY COMPANY SIZE

Assets	Year 1940	Group No. 1	Group No. 2	Group No. 3	Group No. 4	Group No. 5	Group No. 6	Group No. 7
		\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets
Cash		89.1	85.9	11.9	81.1	79.6	83.1	86.6
Net Notes Receivable		1.1	6.6	4.6	1.9	1.6	1.2	1.0
Miscellaneous Current Assets		1.0	5.9	3.6	1.8	1.9	1.6	1.6
Prepaid Expenses		1.0	5.9	3.6	1.8	1.9	1.6	1.6
Investments in Subsidiaries		1.0	5.9	3.6	1.8	1.9	1.6	1.6
Other Non-Current Assets		1.0	5.9	3.6	1.8	1.9	1.6	1.6
Total Risk Assets		90.6	92.8	88.1	85.1	83.4	91.4	90.0
Total Assets		100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity		15.2	14.2	12.7	12.4	11.5	16.3	16.7
Total Risk Assets		90.6	92.8	88.1	85.1	83.4	91.4	90.0
Risk Asset Ratio to Common Equity		5.9 to 1	6.5 to 1	6.9 to 1	6.9 to 1	7.3 to 1	5.6 to 1	5.4 to 1
Cash		6.1	7.0	11.3	82.9	79.7	82.9	88.3
Net Notes Receivable		92.5	86.4	11.3	1.4	1.5	2.4	1.5
Miscellaneous Current Assets		1.2	1.6	1.5	1.2	1.2	1.8	1.5
Prepaid Expenses		1.2	1.6	1.5	1.2	1.2	1.8	1.5
Investments in Subsidiaries		1.2	1.6	1.5	1.2	1.2	1.8	1.5
Other Non-Current Assets		1.2	1.6	1.5	1.2	1.2	1.8	1.5
Total Risk Assets		93.9	93.0	88.7	87.0	82.9	90.1	91.5
Total Assets		100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity		9.0	14.4	14.9	12.8	12.4	15.9	14.3
Total Risk Assets		91.0	93.0	88.7	87.0	82.9	90.1	91.5
Risk Asset Ratio to Common Equity		10.4 to 1	6.5 to 1	6.0 to 1	6.8 to 1	6.7 to 1	5.7 to 1	6.4 to 1
Cash		5.8	7.7	9.6	94.1	83.0	94.9	86.5
Net Notes Receivable		93.0	86.7	9.6	1.4	1.4	2.5	1.2
Miscellaneous Current Assets		1.1	1.2	1.2	1.4	1.4	1.1	1.2
Prepaid Expenses		1.1	1.2	1.2	1.4	1.4	1.1	1.2
Investments in Subsidiaries		1.1	1.2	1.2	1.4	1.4	1.1	1.2
Other Non-Current Assets		1.1	1.2	1.2	1.4	1.4	1.1	1.2
Total Risk Assets		94.2	92.3	90.4	97.8	85.8	91.0	89.9
Total Assets		100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity		7.2	14.6	12.2	11.9	11.5	14.9	14.6
Total Risk Assets		92.8	92.3	90.4	87.8	85.8	91.0	89.9
Risk Asset Ratio to Common Equity		12.9 to 1	6.3 to 1	7.4 to 1	7.4 to 1	7.5 to 1	6.1 to 1	5.8 to 1

Sources: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1939, as follows  
(For number of companies in each group, see Table II - 21):

Group	Capital Funds	Assets
1	Over \$500 Million	National - Factory-Owned
2	\$250-500 Million	National - Independent
3	\$50-250 Million	Semi-national - Independent
4	\$15-50 Million	Regional - Independent
5	\$5-15 Million	Local - Independent
6	\$1-5 Million	Local - Independent
7	\$250 Million or Less	Local - Independent



TABLE II - 17 (1945-47)  
ASSETS BY TYPE AND RISK ASSET RATIOS TO COMMON EQUITY.  
SELECTED SAVES FINANCE COMPANIES, GROUPED BY SIZE, 1945-52

ASSETS	Group No. 1	Group No. 2	Group No. 3	Group No. 4	Group No. 5	Group No. 6	Group No. 7
	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets	\$ of Total Assets
Year 1945:							
Cash	40.0	51.9	17.5	23.4	70.5	68.9	90.3
Net Notes Receivable	.2	21.5	1.4	1.6	2.4	14.9	1.5
Miscellaneous Current Assets	4.6	.1	.2	.2	1.1	.3	.5
Prepaid Expenses	1.2	12.1	6.6	9.4	1.5	.8	--
Investments in Subsidiaries	3.2	.1	.2	4.6	7.2	5.8	3.2
Other Non-Current Assets							
Total Risk Assets	48.1	83.7	82.5	76.6	82.2	90.7	95.5
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	87.1	41.9	32.3	28.6	30.7	26.9	37.1
Total Risk Assets	48.1	83.7	82.5	76.6	82.2	90.7	95.5
Risk Asset Ratio to Common Equity	55 to 1	1.99 to 1	2.5 to 1	2.7 to 1	2.7 to 1	3.4 to 1	2.6 to 1
Year 1946:							
Cash	73.4	24.2	10.2	15.5	80.1	79.9	81.6
Net Notes Receivable	.1	9.6	.5	1.0	.7	1.8	.8
Miscellaneous Current Assets	.1	.2	.2	.3	.2	.1	.2
Prepaid Expenses	1.9	7.1	4.1	3.6	3.3	1.8	.2
Investments in Subsidiaries	.1	.1	.2	13.1	2.8	3.2	.2
Other Non-Current Assets							
Total Risk Assets	75.8	86.8	89.8	84.5	87.1	86.8	94.4
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	36.5	26.1	18.7	20.2	34.6	24.3	25.4
Total Risk Assets	75.8	86.8	89.8	84.5	87.1	86.8	94.4
Risk Asset Ratio to Common Equity	2.07 to 1	3.32 to 1	6.1 to 1	4.2 to 1	6.0 to 1	3.6 to 1	3.7 to 1
Year 1947:							
Cash	83.3	14.6	11.3	14.4	82.6	83.2	87.4
Net Notes Receivable	.2	1.6	.5	.5	.5	3.5	1.9
Miscellaneous Current Assets	1.4	.2	.2	.2	.3	.3	.3
Prepaid Expenses	1.2	5.3	2.6	2.6	1.6	--	.7
Investments in Subsidiaries	.1	.1	.2	2.4	1.2	3.1	2.2
Other Non-Current Assets							
Total Risk Assets	85.4	90.6	88.7	85.6	86.7	90.1	93.0
Total Assets	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Common Equity	23.1	15.2	13.4	16.0	12.1	18.7	19.9
Total Risk Assets	85.4	90.6	88.7	85.6	86.7	90.1	93.0
Risk Asset Ratio to Common Equity	3.7 to 1	6.0 to 1	6.6 to 1	5.4 to 1	7.2 to 1	4.8 to 1	4.7 to 1

Source: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1947, as follows  
(for number of companies in each group, see Table II - 21):

Assets	Capital Funds
1	Over \$500 Million
2	\$250-\$500 Million
3	\$150-\$250 Million
4	\$100-\$150 Million
5	\$50-\$100 Million
6	\$25-\$50 Million
7	\$10-\$25 Million or Less

Assets	Types of Companies
1	National - Factory-Owned
2	National - Independent
3	Semi-national - Independent
4	Regional - Independent
5	Regional - Independent
6	Local - Independent
7	Local - Independent

the operations and the financial conditions of sales finance companies for bank credit purposes. The standards which key banks set for sales finance companies are a base for standards set by other sources of funds also.

Banks impose real limitations on independent sales finance companies. Comparisons of financial structure, however, show that any limitations on GMAC are so different that they point unmistakably to a unique special privilege--self-assumed, or granted, or partly both.

Comparative sizes cannot explain the difference. It is a difference not in degree, but in kind. The distinction lies in the fact that no independent finance company has behind it the might of GMAC's parent--the world's largest industrial corporation, with its matchless economic power as borrower, depositor and investor. Only a Ford-owned finance company could begin to rival such power.

No framework exists for key banks to act in concert to resist the pressures and inducements to give General Motors' finance company special treatment. And an individual bank that tried to impose regular rules on GMAC would, it can be presumed, forfeit GM and GMAC business to less inhibited competitors.

That bankers regard GM and GMAC as a single customer is borne out in General Motors' own statement in 1959 to the Senate, in which GM stated that "lines of credit extended by all national banks and certain state banks are made available to the corporation (GM) and its subsidiaries as a group." 2

The nature and extent of bank regulation is best illustrated by Tables II-18, which sets out the pre-World War II and postwar composite ratios of sales finance companies. These ratios are published by the First National Bank of Chicago, generally conceded to be the first sizable bank to grant substantial lines of credit to sales finance companies.

A booklet published by the First National Bank of Chicago for the benefit and guidance of other banks commenting on the composite ratios introduce the subjects:

"For a number of years The First National Bank of Chicago has maintained statistics and compiled ratios obtained from the audit reports and supplemental information furnished in questionnaires by many of its installment sales finance company accounts. From the ratios of the individual companies we have prepared a composite analysis which shows the trend of the industry as we see it. The figures are those of the national companies, the so-called regional companies and certain of the independents, and since these companies enjoy a major portion of the total volume of the sales finance companies we believe the composite ratios reflect the industry as a whole. We hope the information contained in the booklet will be interesting and beneficial, not alone for the purpose of judging your finance company credits but also in connection with your own consumer credit operations." 3

The composite ratios are compiled by averaging the individual ratios of the companies included. This method gives equal weight to all companies, regardless of widely varying size and acceptance in the money market--as against the method of combining the dollar totals of all companies. The resultant composite ratios take on the characteristics most common to the greatest number included in the group. As is indicated by the nature of this statistical study, the finance companies included are primarily automobile sales finance companies, all of which are independents except one captive company. Therefore, the ratios of necessity describe the independents and tend to obscure the characteristics of the captive company.

The author of this booklet in the introductory section discusses the more important ratios:

2. Auto Financing Legislation, Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, 86th Cong., 1st sess. (Government Printing Office, Washington, D.C., 1959), p.456.

3. Elmer E. Schmus, Ratios of the Installment Sales Finance and Small Loan Companies (First National Bank of Chicago, 1955).

"In our ratio analysis we place greater emphasis upon the liquidity of a finance company than upon the debt ratio. We, of course, consider the debt ratio of the company, but we feel that liquidity reflecting the quality of the assets of the company, should be a relatively more important factor in appraising finance company credit than the inflexible 'debt to net worth' or working capital formulae, which systems assume that all receivables have the same degree of liquidity."

\* \* \*

"A comparison of the more pertinent ratios of December 31, 1954, with those of December 31, 1941--the prewar peak in outstandings--shows that finance companies have, since the close of World War II, followed quite closely the pattern of their 1941 operations. At December 31, 1941, the ratio of debt to working capital stood at 2.96 to 1 and although this ratio has increased in postwar years, the increase is not out of line, as indicated by the December 31, 1954, ratio of 3.34 to 1. Despite a steady increase in outstandings this ratio has remained almost constant since the war's end, the low point of 3.34 to 1 being recorded at December 31, 1954, and the high at the close of 1952. The number of months' collections required to pay debt, net of cash and wholesale paper, increased from 6.92 months in December 31, 1941, to 9.18 months at the end of 1954, but here again the increase is not excessive. Prior to the war, banks accepted as standard either a 3 to 1 debt ratio or a six months' liquidity, depending upon which theory was more acceptable to the particular bank. In view of the demonstrated flexibility by the finance companies in the control of their purchases, banks generally now feel secure in their commitments to companies showing a nine months' liquidity, which would be the equivalent of approximately a 4 to 1 debt position based on the terms granted the consumer in 1941. The two ratios previously referred to show that on the average the companies maintained a position within the present accepted standard."

The following excerpts from the section formally discussing the ratios of sales finance companies cover what seem to be especially pertinent comments.

#### "Ratio (1)

"Adequate cash balances must be maintained by finance companies not alone for current operating purposes, but also for the maintenance of compensating balances fully commensurate with the lines of credit granted by banks. For many years, banks required the finance companies to maintain average balances equal to 20% of the line granted when all or a portion of the line was in use in 10% when the line was not in use. In recent years this requirement has been modified in most quarters to a constant average balance of 15% of the line granted."

Compensating balance requirements increase the stated, or nominal, interest rate to an effective rate from 25% to 40% greater, depending on the amount of compensating balance, the extent of use of the line, and the length of time the company is out of debt to the bank. This requirement has had a great effect upon the structures of finance companies; and as compensating balance restrictions are eased, there is a lower percent of cash and a higher percent of earning assets to total assets, as shown in Table II-17. The compensating balance requirement has also influenced management in its choice of types of available funds.

Long-term funds available from life insurance companies, other institutions, and the public, do not require compensating balances. This factor has encouraged the increased use of long-term senior money by those companies to whom it is available on attractive terms.

Similar considerations apply to the long-term subordinated funds, even though subordinate funds are somewhat higher in cost than are senior borrowings.

Likewise, open market borrowings do not require compensating balances and have the additional advantage of offering a more attractive interest rate than bank borrowings. However, credit restrictions imposed on the use of open market borrowings limit the amount that can be introduced into the "mix" to a small fraction of the whole and negate the compensating

balance advantage. Additionally, most companies must keep unused lines of credit in an amount equal to or in excess of the open market borrowings. This latter requirement, in effect, adds the cost of compensating balances to the open market interest rate for those companies that must conform to this requirement and, of course, decreases the earning asset ratios. (The credit requirements on open market borrowings are set out hereafter in comments on Ratios 19 and 20.) The booklet has this comment on Ratio 2, debt to working capital:

"Ratio (2)

"For many years the ratio of debt to working capital was the generally accepted ratio used in determining debt position, although it has the obvious fault of showing no discrimination as to the liquid character of the assets. It is, nevertheless, valuable in determining the over-all debt position. In the period of our analysis ended December 31, 1954, the composite debt ratios of a group of automobile finance companies handling the major portion of the national volume ranged from 1.50 to 1 on December 31, 1938, to 3.81 to 1 at the close of 1952. In calculating the ratio, include in debt all current liabilities and all long-term debt which is not specifically subordinated to current notes payable. In computing working capital, include in current assets all currently available cash, all notes of customers taken in the regular course of business, repossessions, current accounts receivable, and cash value of life insurance (exclude all capital advances), deducting from the total thereof the reserves for bad debts, deferred income and any other reserves applicable to current assets. Some finance companies operate manufacturing, insurance or other subsidiaries which should not be consolidated with the parent company in developing this ratio, but should be treated as investments."

"(2a) As a supplementary ratio, eliminate from total unsubordinated debt the long-term portion thereof and relate this amount to working capital."

Comments by the quoted author on Ratios 3,4,5 are brief. These ratios have little, if any, influence on the general structure of sales finance companies, except as to choice of receivables:

"...Total receivables include only these receivables that are taken in the regular course of business. Credit experience on new car paper has been rather consistently better than on used car paper--hence, we are interested in determining the percentage in each category and in watching the trend of outstanding."

The next three ratios are covered in the booklet as follows:

"Ratios (6), (7) and (8)

"Finance companies make wholesale advances to dealers as a means of obtaining the retail paper generated by them. Inasmuch as the income derived from wholesale paper does not generally cover the cost of rendering this service, particularly at the low rates now prevalent, a well-managed finance company endeavors to keep wholesale advances at as low a level as is consistent with obtaining the desired amount of retail paper. In calculating this percentage for an automobile finance company, use only wholesale automobile outstandings in comparing with total receivables. Wholesale used car outstandings have in past years offered some problems in times of economic stress when the value of cars pledged to loans suffered marked declines and sizable losses were sustained. The wholesale financing of new cars has, on the other hand, offered comparatively few problems from the standpoint of losses. Because of the differences in the risks involved in the two types of wholesale financing, it is very desirable to determine the percentage of wholesale-automobile outstandings in each category."  
(Underscoring supplied)

About Ratio 9 covering percent of "other receivables" to total receivables, this observation is made:

TABLE II - 18  
THE FIRST NATIONAL BANK OF CHICAGO  
COMPOSITE RATIOS (AS REVISED) - INSTALMENT SALES FINANCE COMPANIES  
 (Part A - 1955-1959)

Statement	Date	12/31/55	12/31/56	12/31/57	12/31/58	12/31/59
% Cash to Total Non-Subordinated Debt	1*	15.07	14.74	14.70	17.22	13.80
Ratio-Total Non-Subordinated Debt to Working Capital	2	3.96	3.89	3.90	3.27	3.64
% Retail Automobile to Total Receivables	3	71.68	71.69	68.02	63.48	64.71
% New Car Retail to Automobile Retail	4	60.85	62.23	58.27	52.96	53.56
% Used Car Retail to Automobile Retail	5	39.15	37.77	41.73	47.04	46.44
% Wholesale Automobile to Total Receivables	6	9.90	7.44	9.78	8.17	8.53
% New Car Wholesale to Automobile Wholesale	7	82.55	72.34	70.38	62.92	67.99
% Used Car Wholesale to Automobile Wholesale	8	17.45	27.66	29.62	37.08	32.07
% Other Receivables to Total Receivables	9	18.42	20.87	22.20	28.35	26.76
% Instalment Receivables Maturing in 12 Months	10	68.22	66.94	65.99	65.53	61.46
% Instalment Receivables Maturing over 12 Months	11	31.78	33.06	34.01	34.47	38.54
Total Non-Subordinated Debt—including all payables, accruals, holdbacks, etc. (in dollars)	12	—	—	—	—	—
% Cash, Wholesale and Instalment Receivables Maturing in 12 Months to Total Non-Subordinated Debt	13	102.83	101.09	100.58	104.82	95.58
No. of Months' Collections Required to Pay Total Non-Subordinated Debt (net of cash and wholesale paper)	14	11.49	11.92	11.99	11.28	13.10
Bank Lines	15	—	—	—	—	—
% Bank Borrowings to Total Non-Subordinated Debt	16	67.68	61.34	60.28	52.48	56.28
% Open Market Borrowings to Total Non-Subordinated Debt	17	10.06	11.18	11.24	17.48	17.07
% Unused Lines to Open Market Borrowings	18	458.18	475.72	560.34	431.87	580.97
% Balances with Instalments Delinquent over 60 Days to Total Instalment Receivables (excluding personal loan receivables)	19	.22	.27	.45	.51	.46
% Capital Loans to Capital Base (net worth plus long term subordinated debt)	20	1.64	1.41	1.60	1.50	1.51
% Repositions to Capital Base (net worth plus long term subordinated debt)	21	.82	.85	1.15	.96	1.06
% Reserve for Losses to Total Instalment Receivables	22	2.15	2.15	2.18	2.11	1.95
% Deferred Income to Total Instalment Receivables with Charges Included in Face Amount of Notes	23	8.22	8.75	9.39	9.59	9.62
% Losses (charge-offs net of recoveries) to Instalment Receivables Liquidated	24	.64	.72	.74	1.35	1.07
Ratios numbered 25 to 32 inclusive have been eliminated as they have no composite value.						
Analysis of Retail Automobile Volume						
% New Car	33	56.18	55.42	52.44	47.15	48.99
% Used Car	34	43.82	44.58	47.56	52.85	51.01
% New Car Paper Maturing Longer than 30 Months	35	—	—	43.92	63.89	76.75
% New Car Paper with Advances over 100% of Dealers' Cost	36	—	—	32.14	28.61	52.99
% New Car Paper with Advances over 110% of Dealers' Cost	37	—	—	—	5.67	7.61
% New Car Balloon (excluding demonstrator paper)	38	12.82	5.34	5.26	4.46	4.07
% Demonstrator Paper	39	6.29	5.92	6.35	7.67	5.33
% Used Car Paper (current and two preceding years' models) Maturing Longer than 24 Months	40	—	—	54.69	49.99	61.46
% Used Car Paper (older models) Maturing Longer than 18 Months	41	—	—	37.71	48.44	56.78
% Used Car Paper with Advances over 100% of Wholesale Value	42	—	—	—	54.77	41.94
% Used Car Paper with Advances over 110% of Wholesale Value	43	—	—	—	18.81	23.08
% Used Car Balloon	44	3.15	2.06	1.96	1.48	1.06
(000 omitted)						
Preferred or Preference Stocks	45	\$ 99,462	\$ 104,449	\$ 104,155	\$ 104,247	\$ 102,195
Common Stock	46	268,831	269,457	272,350	272,081	275,612
Surplus Earned and Capital	47	518,078	594,653	660,154	745,749	823,726
Net Worth	48	886,371	968,559	1,036,659	1,120,077	1,201,531
Term Debt (subordinated)	49	609,962	617,319	692,693	928,343	1,066,991
Capital Base	50	1,496,333	1,585,858	1,729,352	2,048,420	2,268,522
Term Debt (non-subordinated)	51	2,596,396	2,869,730	2,986,277	3,514,132	3,654,909
Volume for Period	52	20,994,954	18,727,446	20,641,438	18,313,559	23,265,335
Total Outstanding	53	8,276,814	8,587,056	9,363,648	8,888,292	10,356,434
% Net Profit to Average Net Worth	54	12.17	11.50	11.48	10.84	10.60
% Dividends to Net Profit	55	47.11	49.12	47.61	50.00	50.05
% Total Expenses including Taxes to Gross Income	56	86.76	87.25	88.49	89.88	90.48
% Net Profit to Retail Purchased	57	1.44	1.55	1.63	1.64	1.40
% Net Profit to Average Total Resources	58	1.82	1.70	1.77	1.68	1.64

\*Ratio numbers

TABLE II - 18  
THE FIRST NATIONAL BANK OF CHICAGO  
COMPOSITE RATIOS - INSTALLMENT SALES FINANCE COMPANIES  
(Part B - 1949-1954)

Statement Date	12/31/49	12/31/50	12/31/51	12/31/52	12/31/53	12/31/54
% Cash to Debt..... 1*	20.35	17.05	17.04	17.02	16.44	18.07
	3.41	3.68	3.79	3.81	3.37	3.34
Less-Debt to Working Capital..... 2	80.1	to 1	to 1	to 1	to 1	to 1
% Retail Receivables to Total Receivables..... 3	74.88	77.45	67.21	66.66	70.66	70.68
% New Car Retail to Total Retail..... 4	34.32	44.00	33.12	28.08	37.00	50.35
% Used Car Retail to Total Retail..... 5	65.68	56.00	66.88	71.92	63.00	49.65
% Wholesale to Total Receivables..... 6	11.10	9.91	12.92	9.70	9.11	8.19
% New Car Wholesale to Total Wholesale..... 7	73.40	70.47	63.78	60.30	73.36	75.99
% Used Car Wholesale to Total Wholesale..... 8	26.60	29.53	36.22	39.70	26.64	24.01
% Other Receivables to Total Receivables..... 9	14.02	12.64	19.87	23.64	20.23	21.13
% Retail maturing in 6 mo..... 10	51.87	47.20	56.64	47.54	47.08	45.05
% Retail maturing in 12 mo..... 11	82.00	79.23	88.53	78.24	78.33	75.05
% Retail maturing over 12 mo..... 12	18.00	20.77	11.47	21.76	21.67	24.95
Less-In Dollars, including holdbacks, return, tax reserves, etc..... 13	—	—	—	—	—	—
% Cash, wholesale, retail and other receivables maturing in 6 mo. to debt..... 14	89.49	81.32	91.92	81.94	81.10	80.64
% Cash, wholesale retail and other receivables maturing in 12 mo. to debt..... 15	121.48	116.62	125.22	115.37	116.43	114.82
No. of months collections required to pay down set of cash and Wholesale Paper..... 16	7.63	8.96	7.15	9.03	8.96	9.18
Bank loans..... 17	—	—	—	—	—	—
% Bank borrowings to Debt..... 18	75.89	76.92	79.44	71.65	65.84	58.95
% Open market borrowings to Debt..... 19	13.02	10.48	11.41	14.55	14.15	17.34
% Unused Lines to open market notes..... 20	341.88	308.25	317.08	281.66	364.30	377.02
% Balances delinquent over 60 days to Total Retail..... 21	.72	.31	.41	.37	.46	.24
% Capital loans to Net Worth..... 22	2.54	2.25	2.77	3.16	2.84	2.31
% Repossessions to Net Worth..... 23	1.44	.72	1.04	1.20	1.45	.92
% Earnings for losses to Total Retail..... 24	2.65	2.39	2.39	2.33	2.32	2.13
% Deferred Income to Total Retail..... 25	7.99	7.88	7.26	7.97	7.77	7.96
% Loss to Retail liquidated..... 26	1.57	.58	.44	.76	1.40	1.18
Value of Business for the Period						
% Automobile Paper—Retail..... 27	—	—	—	—	—	—
% Automobile Paper—Wholesale..... 28	—	—	—	—	—	—
% Industrial & Home Equipment—Retail..... 29	—	—	—	—	—	—
% Industrial & Home Equipment— Wholesale..... 30	—	—	—	—	—	—
% Personal Loans..... 31	—	—	—	—	—	—
% Accounts Receivable..... 32	—	—	—	—	—	—
% Indebtedness..... 33	—	—	—	—	—	—
% Unclassified..... 34	—	—	—	—	—	—
Analysis of Retail Automobile Paper						
% New Car Retail..... 35	—	—	—	—	35.48	47.05
% Used Car Retail..... 36	—	—	—	—	64.52	52.95
% New Car Paper maturing longer than 18 months..... 37	—	—	—	—	83.52	86.20
% New Car Paper with down payment of less than 33 1/3%..... 38	—	—	—	—	79.89	40.34
% New Car Balloon, excluding demonstrated paper..... 39	—	—	—	—	10.83	11.85
% Demonstrator paper..... 40	—	—	—	—	8.00	8.29
% Used Car Paper maturing longer than 12 months..... 41	—	—	—	—	83.95	79.65
% Used Car Paper with down payment of less than 33 1/3%..... 42	—	—	—	—	30.98	27.28
% Used Car Paper with final installment larger than preceding ones..... 43	—	—	—	—	2.78	2.64
	(000 omitted)					
Preferred or Preference Stocks..... 44	\$ 42,433	\$ 56,832	\$ 32,012	\$ 26,409	\$ 26,676	\$ 34,126
Common Stock..... 45	155,238	158,148	161,363	186,974	210,900	215,082
Surplus-Earned and Capital..... 46	250,420	316,460	359,015	396,052	444,639	509,197
Net Worth..... 47	448,091	531,640	552,390	609,435	682,215	758,405
Debt..... 48	672,578	826,772	924,909	987,769	2,004,587	2,128,779
Total Net Worth and Debentures..... 49	1,120,669	1,358,412	1,477,299	1,597,204	2,686,802	2,887,184
Value for period..... 50	8,947,135	10,818,794	11,394,128	12,552,633	15,344,183	14,197,821
Total Outstandings..... 51	2,804,844	3,673,573	3,722,546	4,369,717	5,656,028	5,694,736
% Total expense including taxes to gross income..... 52	80.73	79.50	82.08	83.73	86.36	86.93
% Net profit to Retail purchased..... 53	1.88	1.92	1.78	1.48	1.37	1.46
% Net profit to Average Net Worth..... 54	15.38	17.37	14.96	14.37	12.54	12.33
% Dividends to Net Profit..... 55	39.15	38.64	41.13	44.80	51.85	50.47
% Current Debt to Total Resources..... 56	65.80	66.68	65.98	65.37	60.75	58.33
% Long Term Debt to Total Resources..... 57	11.41	10.60	11.68	12.43	17.37	18.40
% Unearned income, and loss reserves to Total Resources..... 58	7.04	7.27	6.66	7.42	7.11	7.06
% Net Worth to Total Resources..... 59	15.75	15.45	15.68	14.78	14.77	16.21
% Non-Current Assets to Total Resources..... 60	3.45	2.88	3.11	2.62	2.94	3.07
% Gross Income to Total Purchases..... 61	5.15	4.98	5.32	5.50	6.15	6.71
% Net Profit to Total Purchases..... 62	1.00	1.02	.94	.88	.80	.83
% Expense to Total Purchases..... 63	4.15	3.96	4.38	4.62	5.33	5.88

\*Rate Numbers

TABLE II - 18  
THE FIRST NATIONAL BANK OF CHICAGO  
COMPOSITE RATIOS - INSTALMENT SALES FINANCE COMPANIES  
(Part C - 1935-1948)

Statement Date	12/31/35	12/31/36	12/31/37	12/31/38	12/31/39	12/31/40	12/31/41	12/31/47	12/31/48
% Cash to Debt.....	1*	16.33	19.27	18.24	28.26	21.77	16.57	16.23	17.55
Ratio—Debt to Working Capital.....	2	10.1	10.1	10.1	10.1	10.1	10.1	10.1	10.1
% Retail Receivables to Total Receivables	3	72.53	78.15	73.69	64.43	62.89	64.59	69.19	54.30
% New Car Retail to Total Retail.....	4	65.56	—	56.59	46.02	45.76	49.39	50.28	21.72
% Used Car Retail to Total Retail.....	5	34.44	—	43.41	53.98	54.24	50.61	49.72	78.28
% Wholesale to Total Receivables.....	6	15.50	11.23	12.49	13.03	10.66	13.78	11.61	15.22
% New Car Wholesale to Total Wholesale.....	7	78.87	—	66.29	63.74	59.33	66.38	69.73	49.95
% Used Car Wholesale to Total Wholesale.....	8	21.13	—	33.71	36.26	40.67	33.62	30.27	50.05
% Other Receivables to Total Receivables.....	9	15.36	13.93	13.82	22.54	26.45	21.63	19.20	30.48
% Retail maturing in 6 mo.....	10	62.09	56.14	56.70	59.05	54.44	52.72	54.80	57.22
% Retail maturing in 12 mo.....	11	92.19	87.19	88.50	89.52	86.04	84.31	86.60	88.81
% Retail maturing over 12 mo.....	12	7.18	12.81	11.70	10.48	15.96	15.69	15.40	11.17
Debt—In Dollars, including holdbacks, rebates, tax reserves, etc.....	13	—	—	—	—	—	—	—	—
% Cash, wholesale, retail and other receivables maturing in 6 mo to debt.....	14	108.78	103.48	103.13	130.40	104.40	95.23	92.81	93.87
% Cash, wholesale, retail and other receivables maturing in 12 mo to debt.....	15	143.76	140.24	141.26	169.93	142.69	130.98	128.68	123.53
No. of months' collections required to pay debt out of cash and Wholesale Paper.....	16	5.3	5.79	5.82	5.87	5.62	6.73	6.92	6.56
Bank lines.....	17	—	—	—	—	—	—	—	—
% Bank borrowings to Debt.....	18	66.53	61.95	69.43	63.53	65.94	66.23	69.60	84.20
% Open market borrowings to Debt.....	19	23.54	28.36	19.40	22.25	25.01	24.19	21.56	9.61
% Unused Lines to open market notes.....	20	—	—	—	72.50	262.52	154.49	161.54	578.26
% Balances delinquent over 60 days to Total Retail.....	21	77	50	56	90	66	53	68	45
% Capital loans to Net Worth.....	22	2.40	79	1.41	2.01	1.93	1.68	1.14	5.24
% Repossessions to Net Worth.....	23	1.57	1.44	2.84	1.42	93	1.64	.83	95
% Reserves for losses to Total Retail.....	24	2.87	2.66	2.61	2.94	2.61	2.32	2.86	2.01
% Deferred Income to Total Retail.....	25	7.46	6.96	7.08	6.97	7.29	7.05	6.48	7.26
% Loss to Retail liquidated.....	26	75	92	89	1.70	82	92	68	48
Volume of Business for the Period.....	27	—	—	—	—	—	—	—	—
% Automobile Paper—Retail.....	28	—	—	—	—	—	—	—	—
% Automobile Paper—Wholesale.....	29	—	—	—	—	—	—	—	—
% Industrial & Home Equipment—Retail.....	30	—	—	—	—	—	—	—	—
% Industrial & Home Equipment—Wholesale.....	31	—	—	—	—	—	—	—	—
% Personal Loans.....	32	—	—	—	—	—	—	—	—
% Accounts Receivable.....	33	—	—	—	—	—	—	—	—
% Rediscovers.....	34	—	—	—	—	—	—	—	—
% Unclassified.....	35	—	—	—	—	—	—	—	—
Analysis of Retail Automobile Paper.....	36	—	—	—	—	—	—	—	—
% New Car Retail.....	37	38.83	60.10	54.00	39.94	46.49	49.94	48.14	—
% Used Car Retail.....	38	41.15	39.90	46.00	60.06	53.51	50.06	51.86	—
% New Car Paper maturing longer than 18 months.....	39	2.26	29.73	34.82	19.79	33.53	46.26	46.73	—
% New Car Paper with down payment of less than 33 1/3%.....	40	20.95	38.57	22.26	17.54	25.18	32.39	33.01	—
% New Car Balloon, excluding demonstrator paper.....	41	7.55	9.58	3.57	6.56	8.31	10.47	11.05	—
% Demonstrator paper.....	42	10.98	8.09	8.49	13.56	9.51	9.70	8.89	—
% Used Car Paper maturing longer than 12 months.....	43	20.63	38.81	49.18	46.40	52.70	60.23	63.05	—
% Used Car Paper with down payment of less than 33 1/3%.....	44	20.63	37.09	27.92	21.88	31.83	40.03	57.16	—
% Used Car Paper with final installment larger than preceding ones.....	45	4.18	7.15	5.71	4.90	5.53	6.52	5.69	—
(000 omitted)									
Preferred or Preferred Stock.....	46	\$ 34,108	\$ 74,758	\$ 86,202	\$ 71,936	\$ 64,904	\$ 44,734	\$ 40,045	\$ 39,872
Common Stock.....	47	115,373	129,182	162,845	162,984	153,747	188,311	180,510	151,991
Surplus-Earned and Capital.....	48	73,117	92,410	105,599	110,286	109,713	116,016	117,330	144,302
Net Worth.....	49	242,598	296,350	354,646	345,206	328,364	349,061	338,085	336,163
Debtentures.....	50	25,000	170,742	204,443	178,876	173,721	121,107	184,249	105,196
Total Net Worth and Debtentures.....	51	267,598	467,092	559,089	524,082	502,085	560,168	522,334	441,361
Volume for period.....	52	2,695,185	5,526,548	3,903,241	2,215,464	3,058,688	4,059,779	4,541,411	5,546,166
Total Outstanding.....	53	876,343	1,279,772	1,515,856	979,164	1,166,106	1,605,419	1,777,986	1,571,235
% Total expense including taxes to gross income.....	54	69.23	70.82	71.23	77.41	76.13	77.20	78.85	81.41
% Net profit to Retail purchased.....	55	2.95	2.92	2.90	3.01	2.51	2.11	1.96	1.33
% Net profit to Average Net Worth.....	56	16.22	15.54	15.02	9.31	9.44	10.34	11.03	12.60
% Dividends to Net Profit.....	57	52.53	81.48	75.73	85.06	70.54	67.34	72.34	60.03
% Current Debt to Total Resources.....	58	63.38	62.37	63.35	51.81	59.50	63.19	65.57	70.55
% Long Term Debt to Total Resources.....	59	39	3.60	2.56	3.53	3.69	4.86	4.71	7.15
% Unearned income, and loss reserves to Total Resources.....	60	6.74	6.99	6.41	6.66	6.56	6.44	6.45	5.93
% Net Worth to Total Resources.....	61	29.29	27.14	27.68	30.78	30.51	25.51	23.27	16.37
% Non Current Assets to Total Resources.....	62	2.57	2.05	1.71	2.57	2.41	2.03	2.07	2.83
% Gross Income to Total Purchases.....	63	1.83	6.29	6.38	8.52	5.98	5.71	5.40	3.44
% Net profit to Total Purchases.....	64	1.70	6.27	1.84	1.95	1.40	1.24	1.11	.64
% Expense to Total Purchases.....	65	4.13	4.47	4.54	6.57	4.58	4.47	4.27	2.79

\*Ratio numbers

Notes: Ratios were not computed for the years 1942-1944

"...In view of the diversification which has taken place among automobile finance companies during recent years, the percentage of 'other receivables' undoubtedly will continue at a substantial percentage of total outstandings."

Ratios 1, 11, 12, 13, 14 and 15 deal largely with factors preliminary to the determination of liquidity. The importance of liquidity is emphasized by the author in the introductory section of the booklet, which have been quoted. Further comments on the subject:

"Ratio (16)

"Expressing as it does the theoretical period required to liquidate the indebtedness of a finance company other than subordinated debt, this ratio is of fundamental importance in the analysis of finance company statements. The old ratio basis of limiting debt to a certain number of times working capital or net worth assumed that the various companies had the same degree of liquidity, inferring that the terms and rate of collection of receivables were standard--which in an unrestricted economy obviously would not prevail. Under the old debt ratio yardstick, the careful operator who purchased only high grade paper was, in effect, penalized in that the ratio standard set up did not discriminate between him and the operator who purchased large quantities of sub-standard paper. In the years immediately preceding the war, a liquidity slightly in excess of six months was the average for well-managed companies, and this generally resulted in a ratio of debt to working capital of approximately 3 to 1. Reference to the composite ratios shows that at December 31, 1940, the companies previously referred to on the average had debt equivalent to 2.66 times working capital and a liquidity of 6.73 months. At December 31, 1941, the ratio of debt to working capital was 2.96 to 1 with a liquidity of 6.92 months.

"At December 31, 1954, the ratio of debt to working capital was 3.34 to 1 with a liquidity of 9.18 months. In view of the excellent payment record of installment paper over the years, as reflected in ratio number 26 of the composite ratios, coupled with the desire of banks to assist the finance companies in handling the greatly increased volume of paper developed since the end of the war, a nine months' liquidity standard, under average economic conditions, is now regarded as reasonable. It is expected that this liquidity will, on the basis of average terms, result in a debt to working capital ratio of approximately 4 to 1. In calculating liquidity, include in debt all current liabilities and all long-term debt which is not specifically subordinated to current notes payable. In addition to cash and wholesale paper, deduct from the debt, short-term accounts receivable, which have been purchased. In calculating the number of months' collections required, take monthly maturities of all retail paper as well as small loan maturities (Principal only) and relate these monthly totals to the net debt."

See Table II-19 at Ratio 16 affords a comparison of GMAC and the composite group on liquidity.

Comments on Ratios 18, 19, and 20 are important and self-explanatory:

"Ratios (18), (19) and (20)

"The primary source of credit for a finance company is its banks. Without adequate lines from representative banks, a finance company would find it most difficult to borrow effectively on the open market and, of course, could not likely obtain long-term funds with which to operate. Sometimes a company with a good list of banks, which grant ample credit lines, loses sight of the fact that open market borrowings are based on these lines and permits the use of the open market to take up too large a part of total debt. While a saving in interest costs can usually be effected, we believe that a company should limit the use of the open market to 15% or 20% of its borrowings and should at all times have unused credit lines available to cover the open market paper. This is essential because holders of this paper may expect payment at maturity." (Underscoring supplied.)



TABLE II - 19  
COMPARISON OF GMAC WITH THE COMPOSITE FIRST NATIONAL BANK GROUP ON 3 RATIOS:  
UNUSED BANK LINES TO OPEN MARKET NOTES; CASH TO DEBT LIQUIDITY

First Nat'l Bank Ratios	1959	1956	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945
#20 % Unused Bank Lines to Open Market Notes Available to Protect Maturing Open Market Notes															
a - GMAC	53.33%	106.63%	50.59%	52.75%	31.37%	70.65%	55.97%	25.43%	46.79%	37.60%	71.85%	141.11%	261.30%	•	•
b - 1st Nat'l Composite Group	380.97%	431.67%	560.34%	475.72%	498.15%	377.02%	364.30%	261.66%	317.08%	306.25%	341.85%	385.67%	376.26%	•	•
#1 Cash to Debt															
a - GMAC	5.35%	4.68%	4.32%	3.64%	3.97%	4.17%	4.20%	4.69%	7.12%	6.83%	7.31%	11.02%	19.04%	35.04%	402.62%
b - 1st Nat'l Composite Group	13.60%	17.22%	14.70%	14.74%	15.07%	16.07%	16.44%	17.02%	17.04%	17.05%	20.35%	18.62%	17.33%	•	•
#16 Number of Months' Collections Required to Pay Senior Debt Net of Government Wholesale Paper (Liquidity)															
a - GMAC	15.25	14.06	15.03	14.25	14.54	12.57	12.20	12.92	•	•	•	•	•	•	•
b - 1st Nat'l Composite Group	13.10	11.26	11.99	11.92	11.49	9.16	8.96	9.03	7.15	8.96	7.63	7.65	6.56	•	•

SUPPLEMENTARY TABLE  
COMPARATIVE RELATIONSHIPS OF GMAC BANK LINES, BANK BORROWINGS AND OPEN MARKET BORROWINGS

	1959	1956	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945
	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-	\$(-000)-
1. Total Bank Lines	647,027	555,507	506,434	763,107	716,231	649,203	598,686	525,629	469,624	490,376	509,630	369,046	354,407	166,082	94,043
2. Bank Lines in Use	123,446	176,065	332,462	364,577	514,991	267,797	234,953	377,545	241,461	356,504	298,367	106,953	76,799	•	•
3. Unused Bank Lines	723,561	677,422	475,972	398,530	201,240	381,406	363,733	147,664	228,163	133,672	211,463	260,093	277,606	•	•
4. Open Market Borrowings	966,261	635,310	940,760	755,553	641,565	539,599	649,655	560,797	467,660	395,265	294,427	164,325	106,239	•	•
5. % of Open Market Notes to Total Lines	102.51%	74.26%	116.37%	99.01%	69.56%	83.12%	106.59%	110.50%	103.64%	72.43%	57.75%	49.9%	29.96%	•	•

• Not Available  
Source: Computation from GMAC reports; Composite ratios, First National Bank of Chicago.

Various types of funds--long-term, bank lines and open market--offer advantages, but open market funds are the most attractive to those companies restricted least by the prevailing credit rules. According to size, independent companies with the exception of CIT Corp. and commercial credit company are held to a percentage from well below 20% of bank borrowings to slightly above and are expected to keep open lines of bank credit in an amount at least equal to the outstanding open market borrowings.

The escapement from all or any part of the rules apparently depends upon corollary considerations and influence with the key enforcing banks. The one captive company included in these ratios had outstanding in open market borrowings in 1952 an amount that exceeded its total bank lines, and at the same time used 72% of its available bank lines. (See Table II-19).

The very heart of the liability side of the structure of a finance company is the make-up and size of its bank lines. The influence of the commercial banks, the chief supplier of funds of the early finance companies, continues to determine the structure of sales finance companies. This might seem strange, because finance companies since World War II have relied more and more on long-term senior money and subordinate debentures from life insurance companies and other institutions, and banks' influence might logically have been expected to diminish.

Banks' continuing key influence stems from the fact that life insurance companies and other institutional suppliers of funds continue to rely on the banks, acting in their own interest, to police the operations of the sales finance companies.

Provisions in the borrowing indenture with these suppliers of funds require sales finance companies, excepting a few national companies, to draw a substantial amount of their overall credit funds from commercial banks, particularly from those expected to be familiar with and qualified to evaluate the practices and operating results of the sales finance companies.

The banks keep watch on delinquencies, repossessions, losses, new-and-used-car volume relationships, wholesale and retail volume relationships. The banks also monitor the financial management of finance companies, watching liquidity, senior borrowing ratio, relationships of open market funds to unused bank lines and interrelationship to the total lines in use, the cash position, and in general the current position and health of their sale finance company debtors.

These requirements are adhered to with some important discriminations that are disclosed by a study of II-15, II-16, II-17, II-20 and II-21. Here it is clearly reflected that the single captive company, GMAC, does not conform to the standard of ratios and limits to which the rest of the industry generally is held. The principal reason for this immunity, no doubt, is the fact that General Motors Corporation maintains large sums of deposits in its general accounts and other substantial funds in the trust department of the key banks.

No suspicion of conspiracy is needed to explain this immunity. Lending officers of these banks possess limited authority as to general policy and are not likely to offend a substantial and profitable customer by insisting that its subsidiary follow the rules laid down for all of its competitors. But the implications, both as to credit soundness and freedom of the marketplace, need to be recognized.

The pre-World War II leverage advantage of the captive finance company, which averaged about double that of independents and surpassed that level in peak periods, continued into the post-World War II period and presently exists as shown in the five tables cited above.

#### Safety Advantages in Excessive Pyramiding

Unorthodox and exclusive pyramiding can promote safety for the privileged company while

imposing greater risks for its competitors. The advantageous customer rate differential resulting from the pyramiding can be used to attract the "prime" contracts, leaving only contracts of lesser quality for other finance companies. The "customer rate" problem for the companies with normal borrowing ratios is compounded by the additional costs of servicing such "select, good, better or worse" contracts -- a cross-section, not just prime risks.

In the competition between finance companies, this inequality experienced by the independents is, of course, limited to the market in contracts from General Motors dealers, because GMAC confines its activities to General Motors dealers, and independents are effectively excluded from this market. For the business of the non-General Motors dealers, independents compete with much less leverage differential one from another, as indicated by Table II-17. While some may enjoy a relatively higher leverage, they also experience the competition from other companies that possess similar leverage, and together these groups at varying levels will compete for the class of contracts (risk, terms et cetera) that qualify for a particular rate within that particular market.

The discriminatory leverage of GMAC is not effective directly against the independents in the non-General Motors market. Rather its direct impact is effective in the competition (1) between General Motors dealers and dealers for other makes for the nearly two-thirds of automobile volume represented by time buyers, and (2) between General Motors and other automobile manufacturers to obtain control of dealer outlets--and thereby control sales of cars. GM has exclusive weapons in dealer benefits and subsidized wholesale interest rates (which facilitate inventory loading), and also enjoys exclusive incomes from financing, insurance, and sale of parts and new car replacements under insurance coverages. All such advantages are accentuated by the exclusive GMAC pyramid.

The pyramiding advantage of GMAC strikes non-General Motors dealers and non-General Motors manufacturers with effects that are pervasive and can be calamitous. It affects the quality of dealers and the quality of the dealers' time sales business. Non-General Motors dealers experience an erosion of their time buyers in the loss of the better credit risks to the General Motors dealers. In turn, all other automobile manufacturers experience an erosion of their dealer body because of deflection of better dealers to General Motors. The exclusive GMAC leverage as a competitive instrument against dealers and manufacturers is a lethal weapon.

FUTURE STRUCTURE AND BEHAVIOR OF INDEPENDENTS AND CAPTIVE FINANCE COMPANIES

The Manufacturer's Stake in Sales Financing Cost

With nearly two-thirds of new cars sold on time, the competitive pricing of instalment financing service is important to all car manufacturers and their dealers either as to consumer charges, or dealer income, or both. Since any singular advantage enjoyed by a captive finance company of a manufacturer is of concern to all other manufacturers of products, those finance companies serving the dealers of other manufacturers are confronted with pressures to imitate the advantageous pyramiding presently extended only to GMAC.

Certain fundamental questions arise. First, is such pyramiding dangerous to our national economy? Second, if not, should other independent finance companies (now denied the privilege by bank and insurance company creditors) be permitted a debt pyramid that will enable them to match the cost of financing the products of manufacturers that do not own a captive finance company? A third question also is suggested: Should the ownership of captive auto finance companies be permitted and encouraged?

Credit Factors of Excessive Pyramiding

In 1955, GMAC had a 20 to 1 ratio of risk assets (total assets less cash) to common net worth (see Table II-17). An important and familiar benchmark for the soundness of a financial institution's ratio of risk assets to net worth is that used by the United States Comptroller of the Currency, who is charged with the responsibility of examining national banks. The Comptroller has traditionally held a safe risk asset ratio to be about 6 to 1.

Of a bank's risk assets, 80% to 90% consists of loans and discounts and the balance consists of state and municipal bonds, banking house, stock in Federal Reserve Banks, et cetera. When a bank exceeds the 6 to 1 ratio by much, the Comptroller usually questions the adequacy of the bank's capital and may require more capital.

It will be generally conceded that the risk assets of banks are superior in quality to those of finance companies. If it is considered unsafe for banks to invest more than six times their net worth in risk assets, then the credit soundness of the 20 to 1 risk asset ratio is certainly subject to some question.

Ratios of independent sales finance companies do not approach GMAC levels, but rather correspond broadly to the banks' rule, as Table II-17 shows.

If there should be a financial crisis, serious effects could arise if one or more sizable finance companies were to have built an extreme pyramid approaching GMAC's. A financial crisis probably would engender misgivings as to the financial soundness of even those com-

TABLE II - 20  
RATIO OF DEBT TO CAPITAL FUNDS  
GENERAL MOTORS ACCEPTANCE CORP. (AND CONSOLIDATED SUBSIDIARIES)

Maximum and Minimum Ratio During Each Year

Debt			Capital Funds Employed	Ratio	Debt			Capital Funds Employed	Ratio
1919 Dec.	\$ 13,568,877	\$ 2,450,565	5.5 to 1		1940-Dec.	\$ 412,542,252	\$ 85,898,078	4.8 to 1	
May	282,638	2,465,538	.1 to 1		Jan.	327,456,985	86,717,503	3.8 to 1	
1920 March	29,378,458	2,628,261	11.2 to 1		1941 Apr.	485,210,888	89,848,722	5.4 to 1	
Nov.	29,149,383	4,213,892	6.9 to 1		Oct.	428,649,725	118,346,152	3.6 to 1	
1921 March	31,440,532	4,054,481	7.8 to 1		1942 Feb.	430,500,034	114,160,925	3.9 to 1	
Dec.	25,614,627	5,010,551	5.1 to 1		Dec.	135,389,674	87,878,373	1.5 to 1	
1922 Sept.	44,239,534	5,211,876	8.5 to 1		1943 Jan.	110,391,849	88,230,090	1.3 to 1	
Jan.	26,512,431	4,952,243	5.4 to 1		Dec.	53,964,145	91,032,121	.6 to 1	
1923 March	59,768,305	6,463,149	9.2 to 1		1944 Feb.	75,199,685	91,143,104	.8 to 1	
Aug.	55,995,604	8,642,754	6.5 to 1		Dec.	6,611,327	91,081,909	.1 to 1	
1924 Feb.	84,549,308	10,806,136	7.8 to 1		1945 Jan.	15,568,762	91,065,437	.2 to 1	
Dec.	61,092,761	13,618,262	4.5 to 1		Dec.	1,402,543	91,498,315	.0 to 1	
1925 Nov.	98,103,013	14,785,929	6.6 to 1		1946 Dec.	68,005,646	87,053,639	.8 to 1	
Feb.	52,683,912	13,855,741	3.8 to 1		Apr.	1,608,561	89,826,513	.0 to 1	
1926 Oct.	223,872,653	30,717,014	7.3 to 1		1947 Dec.	193,370,133	88,711,450	2.2 to 1	
April	160,621,163	28,861,449	5.6 to 1		Jan.	70,302,925	86,910,119	.8 to 1	
1927 May	252,127,065	38,281,935	6.6 to 1		1948 Dec.	423,188,118	90,294,340	4.7 to 1	
Dec.	252,899,535	52,168,674	4.8 to 1		Jan.	211,257,545	88,895,116	2.4 to 1	
1928 Oct.	335,807,077	59,080,954	5.7 to 1		1949 Oct.	803,290,798	98,749,961	8.1 to 1	
Jan.	244,068,605	52,757,233	4.6 to 1		Nov.	747,764,911	174,828,704	4.3 to 1	
1929 Sept.	407,476,953	69,802,227	5.8 to 1		1950 Feb.	818,058,715	173,404,109	4.7 to 1	
Jan.	278,738,817	64,592,152	4.3 to 1		June	920,205,297	230,560,468	4.0 to 1	
1930 Jan.	339,244,270	77,608,677	4.4 to 1		1951 Dec.	1,061,346,262	227,790,245	4.7 to 1	
Nov.	278,838,196	86,333,657	3.2 to 1		Nov.	1,019,527,578	258,755,272	3.9 to 1	
1931 June	287,471,857	79,845,296	3.6 to 1		1952 Dec.	1,294,818,102	238,852,928	5.4 to 1	
Nov.	220,137,539	83,001,073	2.7 to 1		Feb.	1,006,256,457	230,507,527	4.4 to 1	
1932 Feb.	203,384,828	78,032,082	2.6 to 1		1953 March	1,501,191,050	254,470,193	5.9 to 1	
Dec.	82,481,673	79,490,138	1.0 to 1		Dec.	1,846,880,398	397,479,287	4.6 to 1	
1933 Sept.	121,786,338	82,059,871	1.5 to 1		1954 Feb.	1,854,542,351	404,214,548	4.6 to 1	
March	83,970,124	80,521,860	1.0 to 1		Nov.	1,793,322,026	460,404,532	3.9 to 1	
1934 Aug.	201,787,750	89,484,567	2.3 to 1		1955 May	2,423,661,636	454,262,401	5.3 to 1	
Jan.	93,912,289	84,884,188	1.1 to 1		Jan.	1,956,846,251	444,373,833	4.4 to 1	
1935 Dec.	252,811,260	83,148,231	3.0 to 1		1956 Feb.	2,993,257,290	588,442,518	5.1 to 1	
Jan.	157,633,227	93,669,818	1.7 to 1		Oct.	2,878,873,500	639,955,420	4.5 to 1	
1936 Aug.	391,269,630	90,029,307	4.3 to 1		1957 Dec.	3,364,369,086	648,831,963	5.2 to 1	
Jan.	266,540,400	83,997,241	3.2 to 1		Oct.	3,109,952,828	657,919,419	4.7 to 1	
1937 Dec.	419,757,682	84,915,319	4.9 to 1		1958 Feb.	3,456,240,828	658,470,439	5.2 to 1	
Feb.	321,044,626	85,877,673	3.7 to 1		Nov.	2,781,286,201	696,480,286	4.0 to 1	
1938 Jan.	403,241,852	86,546,331	4.7 to 1		1959 July	3,450,253,466	739,294,967	4.7 to 1	
Nov.	239,391,909	93,191,508	2.6 to 1		Jan.	2,905,449,164	706,742,684	4.1 to 1	
1939 June	322,179,016	86,778,012	3.7 to 1						
Oct.	265,630,190	90,799,920	2.9 to 1						

Sources: GMAC Supplements to Annual Reports

Notes: Debt (notes, loans, and debentures payable) excludes subordinated indebtedness. Capital funds employed include capital stock, surplus and subordinated indebtedness.

panies that had maintained the conventional conservative ratios of borrowings and risk assets. The constriction of credit that could follow would destroy the price structure of dealer inventories and undermine equities and values of consumer durable goods, the chief asset of millions of Americans.

GMAC's gigantic size is put into significant perspective by comparing this subsidiary of one manufacturer with the largest bank in New York, a bank which calls itself "the leading lender to American business and industry." GMAC's gross receivables of \$5,307,000,000 at the end of 1960 were substantially more than the \$4,672,000,000 total loans and mortgages then held by The Chase Manhattan Bank. And Chase's common equity base was about 175% of GMAC's -- \$668,940,000, against \$394,561,000.

At its peak borrowing in 1955 the common net worth of GMAC equaled only 4.8% of its total assets -- less than \$5 for each \$95 of borrowed funds. (See Table II-17). This simply meant that had there been a serious depression, and branch managers had collected all but \$48,000 out of each \$1,000,000, the loss would have been equal to GMAC's common net worth.

There have been many warnings about the possible adverse impact of consumer credit on the economy if terms and down payments should get out of line. Some authorities, however, are less worried about this because it has been repeatedly demonstrated that cautious judgment by consumers, in both up and down swings, controls their credit commitments.

Inordinate consumer debt was not a factor in the 1930's depression, for example. Rather, bold and intemperate manipulations of ambitious men and organizations who used financial pyramiding to extend their control of resources and markets were responsible.

Some experienced finance men believe that any future trouble in consumer credit would be the result of similar desire for power and manipulation through pyramiding. They hold that a real threat lies in the small "down payment" in sales finance companies' total portfolios of receivables (reflecting factory-forced pyramiding on small common equity), rather than the small down payment of consumers.

The presently existing competitive disadvantages, augmented by dealer and manufacturer pressures, will press upon independent companies to seek more liberal pyramiding than they currently practice. But the selective restraints imposed on them by banks, life insurance companies and other suppliers of credit to finance companies will tend to limit the trend. In the absence of equalization at this level, more manufacturers likely will organize captive finance companies, pyramiding them as rapidly and as far as they can, in the hope they may gain a greater share of the market for their products. This would be a hazardous ground of competition, however, whether or not GM exerted its full potential.

The future of the automobile sales finance company as to the prevailing type--captive or independent--and prevailing financial structure depends on (1) a major breakthrough on the part of independents to obtain equal treatment with respect to ratios; (2) willingness of independents to pyramid on common equity to extreme limits; (3) ability and willingness of manufacturers to capitalize captive finance subsidiaries and, in turn, resort to extreme pyramiding; and (4) possible federal legislation or other action to separate GMAC from General Motors and prohibit other captive auto finance companies.

In explaining why Ford Motor Company wanted to organize its own finance company in 1959, the Ford spokesman told the Senate Antitrust and Monopoly Subcommittee:

"(1) We want our dealers and car buyers to have available to them financing and insurance at as low a cost as possible. This requires maximum efficiency in financing and insurance operations, and profits that are not excessive in relation to the risks involved.

"(2) We do not want to be, and we do not want our dealers to be, at a competitive disadvantage with General Motors whose dealers and customers are serviced by GMAC.

"We have no desire to get into the automobile financing and insurance business except

TABLE II - 71  
DEBT, CAPITAL FUNDS, AND SENIOR DEBT TO CAPITAL FUNDS  
RATIOS OF SELECTED SALES FINANCE COMPANIES, 1951-59

Year And Group	Number Cos. Each Group	Total Amt. Senior Debt \$(1,000)	Total Amt. Cap. Funds \$(1,000)	Cap. Funds, % Total Assets	Senior Debt Ratio to Cap. Funds	Year And Group	Number Cos. Each Group	Total Amt. Senior Debt \$(1,000)	Total Amt. Cap. Funds \$(1,000)	Cap. Funds, % Total Assets	Senior Debt Ratio to Cap. Funds
<b>1952</b>						<b>1951</b>					
Group 1	1	3,481,503	736,582	17.5	4.71	Group 1	1	1,211,773	277,790	15.8	5.32
2	2	2,961,890	945,331	24.2	3.13	2	2	1,495,539	496,787	22.7	3.57
3	4	1,433,144	478,263	25.0	3.00	3	4	532,191	152,546	22.3	3.49
4	7	369,368	147,053	27.8	2.45	4	7	158,538	50,862	24.3	3.12
5	8	212,565	85,626	28.7	2.40	5	8	80,150	29,542	26.9	2.77
6	9	148,761	57,738	28.0	2.58	6	9	52,976	17,977	25.4	2.94
7	16	62,026	30,062	28.6	2.06	7	16	23,323	9,228	26.7	2.75
Totals	47	8,689,287	2,482,642			Totals	46	3,554,590	914,224		
<b>1953</b>						<b>1954</b>					
Group 1	1	3,206,428	674,855	17.4	4.75	Group 1	1	1,298,120	237,015	15.4	5.48
2	2	2,379,060	861,884	26.6	2.76	2	2	1,261,489	407,540	23.0	3.39
3	4	1,190,163	413,884	25.8	2.00	3	4	457,901	137,809	23.1	3.32
4	7	306,323	124,975	29.0	2.45	4	7	139,495	45,705	24.7	3.05
5	8	154,436	79,203	33.9	1.95	5	8	66,857	24,272	26.4	2.78
6	9	119,755	55,535	31.7	2.16	6	9	46,619	15,605	25.2	2.97
7	16	52,284	26,363	33.7	1.96	7	16	20,228	2,532	26.6	2.76
Totals	47	7,409,159	2,237,217			Totals	46	3,991,239	875,555		
<b>1957</b>						<b>1958</b>					
Group 1	1	3,740,043	648,832	14.8	5.78	Group 1	1	894,968	170,967	16.0	5.23
2	2	2,901,813	814,981	21.0	3.56	2	2	1,090,466	306,520	26.0	2.88
3	4	1,228,011	399,490	24.6	3.07	3	4	314,873	112,323	26.3	2.80
4	7	337,047	118,695	26.0	2.04	4	7	111,690	36,065	26.4	2.44
5	8	159,918	71,941	31.0	2.22	5	8	47,821	19,882	29.4	2.81
6	9	122,149	47,362	28.0	2.57	6	9	33,002	11,681	26.1	2.73
7	16	64,024	26,172	29.0	2.45	7	16	11,977	4,613	27.0	2.60
Totals	47	8,562,076	2,127,498			Totals	46	2,512,729	742,051		
<b>1956</b>						<b>1959</b>					
Group 1	1	3,408,263	624,795	15.5	5.46	Group 1	1	503,030	90,294	15.2	5.57
2	2	2,626,685	739,875	22.0	3.55	2	2	1,071,685	270,632	20.2	4.86
3	4	1,144,720	385,935	23.2	3.31	3	4	333,062	97,002	22.6	3.43
4	7	393,311	107,052	26.7	2.74	4	7	101,225	32,792	24.5	3.09
5	8	167,381	63,315	27.4	2.64	5	8	41,846	17,902	30.0	2.34
6	9	102,956	43,280	29.6	2.38	6	9	26,640	9,918	27.1	2.79
7	16	34,016	28,131	30.9	2.23	7	16	10,568	4,297	29.9	2.74
Totals	47	7,797,332	1,948,433			Totals	46	2,087,554	522,937		
<b>1955</b>						<b>1957</b>					
Group 1	1	2,213,237	581,090	15.3	5.38	Group 1	1	395,728	88,711	23.1	3.73
2	2	2,645,143	636,615	19.4	4.15	2	2	832,506	208,518	20.0	5.79
3	4	1,045,875	309,853	22.9	3.38	3	4	275,100	81,593	22.9	3.77
4	7	279,393	99,943	26.4	2.90	4	7	57,918	26,717	31.6	2.17
5	8	132,083	54,719	26.5	2.78	5	8	34,345	13,374	28.0	2.57
6	9	79,516	35,506	27.5	2.63	6	9	18,213	7,698	29.7	2.34
7	16	47,390	20,404	30.1	2.32	7	16	7,872	1,221	28.0	2.45
Totals	47	7,480,637	1,738,130			Totals	46	1,521,689	429,872		
<b>1954</b>						<b>1956</b>					
Group 1	1	2,210,379	441,313	16.6	5.01	Group 1	1	150,485	87,094	36.5	1.77
2	2	1,656,074	605,465	26.8	2.74	2	2	513,063	181,593	26.1	2.83
3	4	745,385	240,400	24.4	3.10	3	4	161,295	54,067	25.8	1.88
4	7	207,362	71,976	25.8	2.88	4	7	40,342	21,248	34.5	1.90
5	8	106,119	43,428	29.0	2.44	5	8	18,782	9,074	32.5	2.08
6	9	57,449	27,354	32.3	2.10	6	9	8,578	4,695	35.4	1.95
7	16	29,002	14,701	33.6	1.97	7	16	6,460	2,522	38.1	2.35
Totals	47	5,011,777	1,444,641			Totals	39	899,005	342,720		
<b>1953</b>						<b>1955</b>					
Group 1	1	2,055,340	397,479	16.2	5.17	Group 1	1	7,235	93,499	93.1	.98
2	2	1,958,165	553,923	22.1	3.34	2	2	197,040	185,034	40.6	1.04
3	4	719,134	213,320	22.8	3.37	3	3	56,597	30,131	40.3	1.04
4	7	202,353	67,234	24.9	3.01	4	7	22,095	18,118	45.1	1.21
5	8	106,265	40,139	27.4	2.65	5	8	7,599	7,303	49.2	1.03
6	9	63,280	24,724	28.1	2.56	6	9	6,574	4,443	40.3	1.47
7	16	31,861	12,046	27.7	2.62	7	16	1,213	713	37.1	1.74
Totals	46	3,132,408	1,309,765			Totals	35	298,350	345,283		
<b>1952</b>						<b>1957</b>					
Group 1	1	1,479,856	238,853	13.9	4.20	Group 1	1	7,235	93,499	93.1	.98
2	2	1,810,443	456,232	20.1	3.96	2	2	197,040	185,034	40.6	1.04
3	4	642,574	198,839	23.6	3.23	3	3	56,597	30,131	40.3	1.04
4	7	179,117	60,504	25.3	2.96	4	7	22,095	18,118	45.1	1.21
5	8	97,171	34,690	26.3	2.80	5	8	7,599	7,303	49.2	1.03
6	9	60,339	21,118	25.9	2.86	6	9	6,574	4,443	40.3	1.47
7	16	28,485	10,626	27.3	2.67	7	16	1,213	713	37.1	1.74
Totals	46	4,297,905	1,020,912			Totals	35	298,350	345,283		

Source: Survey by the American Finance Conference

Groupings are based on the amount of capital funds in 1959. as follows:

Group	Capital Funds	Type of Corporation
1	Over \$500 Million	National - Forty-Second
2	\$250-500 Million	National - Independent
3	\$50-250 Million	Semi-national - Independent
4	\$15-50 Million	Regional - Independent
5	\$7.5-15 Million	Regional - Independent
6	\$3.75-7.5 Million	Local - Independent
7	\$750 Million or Less	Local - Independent

as necessary to achieve these two objectives." 4

The Ford spokesman said his company concluded that between GMAC's discount rate to dealers and independents' rates, "the typical differentiation is equivalent to approximately one-half of one percent discount."

The witness did not mention GMAC's unique advantages of leverage which make such a differential possible. However, a statement filed by General Motors in the same hearings sets forth GMAC's privileged position, while trying to deny that such privilege exists. The difference in status of GMAC and that of independents is illumined in this GM passage:

"In accordance with the provisions of its indentures, GMAC may borrow presently up to 100 percent of the amount of its capital stock and surplus in senior subordinated indebtedness as well as 100 percent in junior subordinated indebtedness; i.e., the equivalent of 200 percent of its capital stock and surplus. While some smaller finance companies have substantially higher ratios of subordinated indebtedness and/or capital notes to capital stock and surplus than GMAC, studies reveal that larger finance companies are limited to a ratio of 125 percent or even 100 percent. As of the end of 1958, GMAC was borrowing in this manner only 129 percent of its total capital stock and surplus." 5 (Underscoring supplied.)

That ownership by General Motors is indispensable to GMAC's favored borrowing status is clear from this excerpt from the GM statement at page 455 of the hearings report:

"An attempt has been made to show that an advantage exists by reason of the fact that, as long as GMAC is owned by General Motors, it can borrow up to 200 percent of its equity capital through issuing subordinated notes but only 133 percent in the absence of GM ownership. However, at the end of 1958 the amount of GMAC subordinated indebtedness in relation to its equity capital was 129 percent. CIT has the right to borrow 125 percent in the form of subordinated indebtedness, but at the end of 1958 its outstanding subordinated indebtedness was only 79 percent of its equity capital. Thus the witness' own company, CIT, can if it wishes approximate the existing GMAC relationship between subordinated notes and equity capital. There is no basis for the contention that GMAC is obtaining any financial advantage."

GMAC refers to its relationship of subordinated debt to net worth of 129% for 1958 only, the lowest year since 1952. However, it reached a high of 166% in 1954, and soared nearly as high in other years.

The General Motors agreement referred to above is proof enough that GMAC is able to borrow more funds than normal because of its captive ownership. The agreement provides that GMAC will lose the privilege if and when it loses its General Motors' ownership status.

The advantage of excessive subordinated debt does not provide the full difference in pyramiding by GMAC. This leverage advantage in the capital base is multiplied by a similar leverage advantage in senior borrowings.

Table II-20 lists the senior borrowing ratio of GMAC from 1919 to 1959, taken from the Supplementary Financial Reports of GMAC. It shows that GMAC commonly exceeds a maximum of 5 to 1.

Most other sales finance companies are held to a senior borrowing ratio of less than three times their capital base by the key banks that set the standards followed by all other lending banks. A few finance companies are allowed a 3 to 1 ratio, and a very few are allowed a

4 Auto Financing Legislation, U.S. Senate, 1959, op.cit., p.189, 190.

5 This reference appears at Page 447 of the 1959 Senate hearings. A copy of the indenture agreement is reproduced at Page 601 of the same volume.



4 to 1 ratio. Table II-21 presents the senior debt to capital funds ratios for 1945-59 of a cross-section of classified sales finance companies surveyed by the American Finance Conference; GMAC is Group 1.

The simple multiplication of the permitted senior ratio by the subordinated debt ratio constructs the pyramid.

THE AUTOMOBILE SALES FINANCE DICHOTOMY AND  
THE AUTOMOBILE MANUFACTURING MONOPOLY POWER

The automobile sales finance business, distinguished from the general sales finance business, is a distinct dichotomy.

One side of the dichotomy is the singular operation of GMAC, confining its services to the products sold by General Motors dealers. The other part of the dichotomy is all other sales finance institutions, including hundreds of finance companies, local, regional, and national, which compete for the sales finance business of dealers representing non-General Motors manufacturers, plus what business they are able to glean from General Motors dealers.

Together the two parts of this dichotomy furnish the retail and wholesale financing service for a highly concentrated industry of only five automobile manufacturers. One company has effective monopoly power in its dominance of the market and pricing.

The distinct advantages possessed by GMAC for the benefit of its parent, General Motors, have set up competitive strains and stresses that threaten the precarious dividing line between unfulfilled and fulfilled monopoly power.

Unfulfilled monopoly may, out of discretion, share or seem to share its power with others, may allow the less powerful to survive. But monopolistic power is difficult to hold back from complete fulfillment unless measures are taken to assure fair, free competition. Monopoly power can best be ended by eliminating it and substituting the power of a free marketplace.

The unique advantages of GMAC, through abnormal pyramiding coupled with reduction of costs to control of dealers, make it impossible for a manufacturer without a finance company to compete effectively with GM. The competitive situation must be equalized by divorcement or other means.

While the competitive advantages to the manufacturer of owning a captive finance company have been described herein, fuller understanding calls for further elaboration.

Ford's "interest and objectives" in automobile financing were described by its spokesman before the Senate in 1959 as twofold and "very simple" - (1) providing the lowest possible financing and insurance costs; (2) assuring no competitive disadvantage for Ford and its dealers as against GM and its dealers.

Full perspective discloses the latter-named objective, concerning competitive disadvantage, as touching on the real and basic concern. And full perspective casts serious doubt as to the reality of the first-stated objective, lower costs, particularly as to costs to the car buyer. The matter of costs will be discussed in detail herein, after further exposition of the competitive stakes between manufacturers.

Far more revealing than Ford's testimony in 1959 were its statements to the Federal Courts in 1946, another time when the company was pleading that it needed a finance company to compete with General Motors.

After anti-trust and restraint of trade indictments against General Motors, Ford and Chrysler and their finance company subsidiaries and affiliates in 1938, the competitors of GM and GMAC signed consent decrees to forego such ties if GM were similarly divested. GM, which resisted, was convicted, but never was required to give up its finance company.)

The prime use of the automobile factory finance company stands clearly as the core of Ford's concern about GM and GMAC in its statements to the U.S. District Court in 1946. This prime use is:

Maximizing factory sales and profits to the disadvantage of competitors.

As Ford explained to the federal courts:

TABLE 3

Debit and Net Worth of Finance Companies by  
Amount and Size of Company, 1946-1956  
Dollar amounts in millions

## I. FIVE LARGEST SALES FINANCE COMPANIES

Year	Per Cent of Total				Net Worth and Subordinated Debt
	Total Amount	Short-term	Senior Debt	Subordinated Debt	
1946	8,485	53.5	11.0	9	34.6
1947	8,855	64.3	10.5	2.9	22.3
1948	9,185	64.3	10.5	2.5	19.2
1949	2,017	55.8	22.5	8.0	17.4
1950	2,544	55.0	19.6	8.0	17.4
1951	3,275	55.1	21.8	7.2	15.9
1952	3,470	55.0	22.5	6.8	15.7
1953	4,134	60.4	18.8	6.7	14.1
1954	5,131	45.1	32.8	9.5	12.6
1955	5,019	41.5	34.4	13.1	11.1
1956	7,702	40.1	38.6	10.2	11.1

## II. FIVE MEDIUM SIZE SALES FINANCE COMPANIES

Year	Total Amount	Short-term	Senior Debt	Subordinated Debt	Net Worth and Subordinated Debt
1946	850	56.1	0	14.6	20.3
1947	74	65.6	3	13.3	24.1
1948	101	64.6	5.9	10.0	19.5
1949	104	64.6	5.9	9.9	17.7
1950	134	62.5	9.9	9.9	27.6
1951	148	65.7	10.8	9.3	14.2
1952	177	63.6	7.8	10.7	17.9
1953	205	60.0	12.2	10.7	17.1
1954	222	57.2	13.3	10.7	18.8
1955	329	57.9	13.8	13.2	15.1
1956	356	48.9	20.3	14.3	16.3

## III. TWENTY SMALLER SALES FINANCE COMPANIES

Year	Total Amount	Short-term	Senior Debt	Subordinated Debt	Net Worth and Subordinated Debt
1946	347	59.4	1.5	2.8	36.3
1947	76	64.3	5.3	2.5	25.9
1948	101	68.5	0	8.7	22.8
1949	121	70.5	2.2	7.3	20.2
1950	177	70.2	2.1	7.3	20.4
1951	203	68.3	3.3	8.2	20.2
1952	229	67.5	3.9	9.5	19.1
1953	233	65.3	5.3	9.0	20.4
1954	309	66.7	5.2	10.3	17.8
1955	352	61.1	10.4	10.8	17.7

TABLE 3 (continued)

Year	Per Cent of Total				Net Worth and Subordinated Debt
	Total Amount	Short-term	Senior Debt	Subordinated Debt	
1946	320	39.3	21.1	2.1	37.5
1947	381	34.5	25.9	2.2	36.2
1948	417	34.1	25.9	2.2	36.2
1949	522	32.7	20.3	3.8	34.2
1950	665	36.1	28.9	3.6	31.4
1951	779	34.8	28.3	7.9	29.0
1952	922	29.1	38.2	3.1	29.6
1953	1,037	25.3	42.2	3.0	29.5
1954	1,100	23.7	43.9	3.1	29.3
1955	1,271	27.9	41.3	3.0	27.8
1956	1,507	24.5	45.3	4.3	25.7

## V. FIFTEEN SMALLER CONSUMER FINANCE COMPANIES

Year	Total Amount	Short-term	Senior Debt	Subordinated Debt	Net Worth and Subordinated Debt
1946	60	43.5	12.3	11.3	32.9
1947	79	49.1	9.6	12.6	28.7
1948	99	49.9	8.3	12.4	29.4
1949	117	53.8	6.6	12.6	27.5
1950	175	51.2	9.9	10.8	28.1
1951	209	47.8	12.8	12.7	26.7
1952	232	45.5	14.4	14.6	25.5
1953	261	40.9	16.8	17.7	24.6
1954	316	45.3	14.1	17.0	23.6
1955	363	42.8	18.8	15.7	22.7
1956					38.4

TABLE 14

Total Liabilities of Finance Companies  
by Type of Company 1946-1956  
Dollar amounts in millions

Year	Sales Finance Companies				Consumer Finance Companies			
	Five Largest	Five Medium Size	Twenty Smaller	Twenty Smaller	Five Largest	Five Medium Size	Twenty Smaller	Twenty Smaller
1946	\$1,153	\$55	\$53	\$348	\$61	\$412	\$85	\$61
1947	1,792	82	85	412	85	412	85	85
1948	2,300	120	116	494	107	494	107	107
1949	3,043	127	139	565	124	565	124	124
1950	3,610	161	182	698	156	698	156	156
1951	4,121	177	202	823	182	823	182	182
1952	4,926	210	231	1,037	227	1,037	227	227
1953	5,988	236	257	1,138	247	1,138	247	247
1954	5,931	253	256	1,193	281	1,193	281	281
1955	8,464	326	340	1,593	341	1,593	341	341
1956	8,403	326	340	1,603	408			

Reproduced from Finance Companies: How and Where They Obtain Their Funds.  
John M. Chapman and Frederick W. Jones. (Graduate School of Business,  
Columbia University, New York, 1959).

"Respondent feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of its products, and it feels that its inability to do this in the past has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this respondent to all cars sold by all manufacturers...Respondent is, therefore, confronted with the necessity of taking some steps to overcome this competitive disadvantage."

Ford's statements show its competitive disadvantage as centering in two major areas:

1. "Sales appeal" of the captive finance company's plan, "better adapted to the sale of its products."
2. "Serious handicap...in the market for new dealers" because of special financial concessions by the captive company.

Ford elaborated on these points to the court as follows, citing GM's exclusive advantages through its finance company:

#### Sales Appeal

"(1) Respondent cannot offer to the dealers a plan financing which it considers more satisfactory from the point of view of sales appeal and particularly from the point of view of selling respondent's own products.

"The financing of the retail sales of automobiles is an integral part of the sale, one of the factors which the customer takes into consideration in determining what kind of a car he is going to buy. If, for example he is in doubt as to whether to buy one of respondent's cars or the car of a competitor of respondent, he may be persuaded to buy the car of the competitor because he likes the financing plan offered by the dealer in that car better than he likes that offered by respondent's dealers.

"If General Motors Corporation feels that the plans offered by existing finance companies do not have sufficient sales appeal or are not particularly adapted to promote the sale of General Motors Products, then General Motors Corporation through General Motors Acceptance Corporation can offer, advertise, and recommend to the dealers and the public a plan which supplies the sales appeal considered lacking in the plans offered by other finance companies. Respondent is not able to do this.

"Its dealers have to choose between the plans that are offered by existing finance companies. These finance companies finance all makes of cars and their plans are not particularly adapted to the sale of respondent's products. Respondent feels that it could offer through a finance company which it owned and controlled a plan of financing better adapted to the sale of its products.

"And it feels that its inability to do this in the past has resulted in the loss of sales evidenced by the decrease in the percentage of cars sold by this respondent to all cars sold by all automobile manufacturers."

Recurring through the above points is an emphasis on factory sales and profits. Notably absent are expressed concern about finance rates to the retail buyer. Implicit in the special sales appeal is possible relaxation of standards to permit unsound credit terms.

Ford's discussion of financing as it affects the competition for dealers included this explanation to the federal courts:

#### Competition for Dealers

"(2) In order for an automobile manufacturer to sell cars, it is necessary for him to have a large number of dealers. The competition between automobile companies to obtain dealers is always energetic and aggressive.

"The company which is able to offer to its dealers special financial assistance is often in a better position to obtain dealers than one which is not able to offer this assistance."

"General Motors Corporation through General Motors Acceptance Corporation is in a position to extend to dealers working capital loans which are more generous and timely than similar loans made available by other finance companies and banks."

"This respondent because it does not have such a finance company is not in a position to do this."

"Nor is it in a position to absorb the entire cost of floor planning new cars and trucks for its dealers while General Motors Corporation through General Motors Acceptance Corporation can do so."

"This constitutes a serious handicap to this respondent in the market for new dealers."

Testimony at the 1959 Senate hearings affords amplification of the exclusive advantages which the GM-GMAC combination holds over competing manufacturers, dealers and finance agencies. An independent finance company executive gave this explanation:

#### Five Dealer Incomes

"The GM dealer receives five incomes controlled by GM and its subsidiaries, an exclusive General Motors privilege. They are (1) the markup on the new car, (2) the normal reserve for losses on time sales set up on the books of GMAC, (3) the overage or pack charged to time buyers when the charges reach or approach the maximum set by law, and such overage is then credited to or paid to the dealer by GMAC, (4) the commission paid auto dealers on insurance included and paid for in the time sale contract, (5) the income, so long as the dealer remains a GM dealer, from the repairs and parts replacements under losses under such policies."

"Under the GM mobility of subsidy plan, all these incomes are under GM control and passed on to the dealer from GM or its subsidiaries. With an understanding of this, it becomes clear why GMAC with all its freak advantages of leverages, low money costs, and practically no acquisition cost, permit high charges to the public."

"The maximum rates simply generate the overages or packs paid by the time buyers. GMAC then becomes the source of this pocket of income for the dealers. This along with the other four pocketbooks enables GM to control and hold the GM dealers from going to other manufacturers. It practically eliminates dealer turnover from GM to other manufacturers and attracts the best dealers from the other manufacturers."

Besides being tied to a single source for all five sources of income, the dealer is further kept under the factory's control by the delayed nature of two of the five sources. The same witness explained (page 305):

"The dealer has two immediate incomes -- the markup on the car and the commission on the insurance -- and two delayed incomes -- the profitable reserve on the books and in the possession of GMAC, and the profits he will make on repairing cars under insurance losses on policies he has written with the GMAC insurance subsidiary."

"It doesn't take any great imagination to see that such a dealer would hesitate to switch franchises to a Ford or Chrysler product, or back in the days of Kaiser-Frazier, to their franchise."

"This dealer would have to trust a finance company belonging to an unfriendly manufacturer to collect his accounts well in order that no unusual losses would occur so that the direct profits from the reserves would come to him in that amount that he

\* Auto Financing Legislation, 1959 Senate Hearings, pp. 303,304

expected in the beginning. This dealer knows that the delayed income on the repairs to cars under losses on the insurance policies would certainly not go to him but instead to the dealer who succeeded him in the General Motors franchise."

If GM and GMAC were divorced and other auto manufacturers likewise forbidden to own finance companies, the factory would control only one of the dealer's "five pocketbooks of income"--the sale of the car--proponents of such action point out.

This would put all manufacturers, present and future, on the same footing.

GM dealers could continue to get the four other pockets of income from an independent GMAC, without any factory pressures from this source on inventory loading.

Dealers of other makes could use the same services. And all dealers could use the services of other independent finance companies and other institutions, according to their free choice.

THE TRUTH ABOUT FINANCING RATES

Whether General Motors through GMAC provides its customers with low financing costs and whether Ford is pressing to match this performance (as Ford's spokesman testified in 1959) should be evaluated in the light of actual practice of these manufacturers and their captive finance companies in the marketplace.

In contrast to certain statements which Ford made to the Senate in 1959, this quote from Ford's supplemental statement after hearings testimony describes the essence of sales finance transactions:

"In a typical sales financing transaction a dealer negotiates with the customer an installment contract for the sale of an automobile. The contract includes a finance rate negotiated within a framework of such factors as competition, state regulation, and credit standing. A finance company then purchases the contract from the dealer at a discount rate."

This is a true statement and exposes the simplicity of the conduct of business between the sales finance company and the automobile dealer. Finance companies simply buy contracts at a discount. That discount is generally set up on a discount sheet and varies by new, late-model used cars and old-model used cars.

A specimen discount plan of GMAC in effect in Houston in 1958, is set out in Table II-22.

The discount charged by GMAC is set up in Column 3 under the heading "GMAC Discount." The varying rates that may be charged the time buyer are listed in Column 2. The difference between the two is paid or credited to the dealer's account by GMAC. The column headed, "Retention Recourse" is the normal reserve for losses. The amount in excess of the normal reserve set up in the column to the extreme right headed, "Total Dealer Reserve, including Recourse Retention" includes what is known in the industry as a "pack."

Obviously the GMAC discount plan, with its variable retail rates, contemplates that the dealer will not charge a uniformly low rate, or the lowest possible rate, to all his time buyers.

Despite its supposed concern about low retail rates, Ford follows the same variable rate principle that is evident in the GMAC plan. Specimen Ford Motor Credit Company finance rates, in effect in Chicago and Dallas in 1960, are set out in Table II-23.

GMAC Defines Finance Pack

In 1938 GMAC very simply defines a "pack" in its brief before the Federal Trade Commission.

GMAC defined any amount above its discount plus retained reserve as a "pack", as explained in these words:

"By reference to this chart he (the dealer) is able to determine the amount of the finance charge or differential he is to add to the basic price in making up the total time price of the contract he expects to sell. The chart amount and the differential contained in the total time price will correspond if the dealer conducts his installment sales on the basis of adding only such differential into the time price to the buyer as equals the amount which the chart indicates GMAC, in paying the dealer for the contract, will deduct from the deferred balance payable under the installment contract (the buyer having made a down payment to the dealer or received a used car trade allowance). In this case, the net result to the dealer is the same as though he had sold the car in a cash sale, since the down payment received and the amount of GMAC's payment for the contract equal the cash delivered price of the car.

"On the other hand, if when he expects to sell the contract the dealer 'packs' the finance charge or differential used in the computation of his time price by making it greater than the amount indicated in the chart, the net result, if the finance company buys the contract at the indicated discount under those circumstances, is that the dealer will receive more than the cash price because he will have charged the buyer a greater time price differential than the GMAC discount cost the dealer."

The GMAC and Ford Motor Credit rate charts shown herein provide for the very "pack" defined by GMAC. No matter how high a rate the dealer negotiates with the consumer--in struggling to make a net profit on the total transaction -- the discount rate which the finance company charges the dealer remains constant.

It is significant to compare the 50 cents per \$100 differential which Ford told the Senate exists between GMAC rates and independents' rates on new cars to the maximum reserve of \$2.65 per \$100 on new cars provided in the GMAC rate chart herein.

It is also noteworthy, as brought out in the Senate hearings, that Ford, which had spoken of its need for low competitive finance rates, selected Indianapolis as one of the first cities for its new finance company operations -- a locality where "GMAC offers rates up to \$7.50 a hundred" and there are "bank rates as low as \$4.50."

#### Factory Company Introduced Reserve

Significantly, it was a factory finance company, GMAC, that introduced the principle of dealer participation in the finance charge, which has led to distortions of finance rates to make up to the dealer for part of the profit he should make on the sale of the car. It was the seemingly innocent "reserve" that brought about the "pack."

A GMAC representative flatly admitted to an NRA official that the reserve (which GMAC introduced in 1925) came into the competitive picture before the bonus (which independents used as a counter-weapon).<sup>\*\*</sup> The true nature of the reserve is explained by Russell Hardy former special assistant to the Attorney General of the United States, writing in the Indiana Law Journal (Spring 1955):

"GM and GMAC gave the dealer participation the euphemistic label of 'repossession loss reserve', on the pretense it served solely to compensate the dealers for losses on defaulted finance notes. In 1933 Alfred P. Sloan, Jr., then president of General Motors candidly stated that any 'appreciable excess' over actual repossession losses was 'unfair to other finance companies'."

#### Size of GMAC Reserve Payments

How appreciable the excess over losses has become was indicated by Charles G. Stradella,

\* United States of America, Before Federal Trade Commission, Docket No. 3001 Brief of Counsel for Respondents, pp.6,7.  
<sup>\*\*</sup> Minutes of meeting held in the office of NRA Division Administrator Leighton H. Peebles, Room 3309, Department of Commerce Office Building, Washington, D.C., 10:30 A.M., October 8, 1934.



TABLE II - 22  
SPECIMEN GMAC DISCOUNT PLAN FOR DEALERS  
(Effective in Houston, Texas, 1956)

Instruction sheet—Revised discount plan, April 15, 1958, yearly percentages

Classification	Present GMAC charts (percent)	GMAC discount 32-1	Add Non-recourse 36-1	Retention Recourse 26-30	Total dealers reserve, including recourse retention
1. New passenger and new commercial cars (1-ton capacity or less)	5.85, 6.00, 6.25, 6.50, 6.75, 7.00, 7.25, and 7.50	4.85	0.30	1.00	Recourse 1.00 to 2.65 Nonrecourse 0.70 to 2.35
2. New commercial cars (over 1-ton capacity)	6.50, 6.75, 7.00, 7.25, and 7.50	5.45	.30	1.00	Recourse 1.05 to 2.85 Nonrecourse 0.75 to 1.75
3. One-year-old passenger cars	8.00, 8.25, 8.50, 8.75, 9.00, 9.25, 9.50	5.35	.80	2.00	Recourse 2.65 to 4.15 Nonrecourse 1.85 to 3.35
4. Late model used passenger and commercial cars (2 and 3 model years previous to current series)	8.00, 8.25, 8.50, 8.75, 9.00, 9.25, 9.50	5.85	.80	2.00	Recourse 2.15 to 3.65 Nonrecourse 1.35 to 2.85
5. Older model used passenger and commercial (over 3 years previous to current series)					
\$1000 and up					
900 to 999	9.50, 10.50	6.50	.90	3.00	Recourse 3.00 to 4.00
800 to 899	10.25, 11.25	7.25	.95	3.00	Nonrecourse 2.10 to 3.10
700 to 799	12.25, 13.25	9.25	1.15	3.00	
600 to 699	13.00, 14.00	10.00	1.25	3.00	
500 to 599	14.00, 15.00	11.00	1.30	3.00	
400 to 499	14.50, 15.50	11.50	1.35	3.00	
300 to 399	15.25, 16.25	12.25	1.40	3.00	Recourse 3.00 to 4.00
299 and below	16.00, 17.00	13.00	1.50	3.00	Nonrecourse 1.50 to 2.80
6. Farmer plan					
New	9.75, 10.75	17.85	1.30	1.90	
Late model	13.25, 14.25	19.35	1.80	3.90	
Older model	21.25, 22.25	14.55	1.90 to 1.50	6.70	

<sup>1</sup> True.

(In percent)

GMAC discount rate	Account 26-31 hold-back or retention	Suggested minimum customer rate
7. Diversified financing:		
Diversified financing new products: 9.00 on balances to up \$300 graduated to 4.50 at a balance of \$8,000 and up.	1.00	10.00 on balances up to \$300 graduated to 5.50 at a balance of \$8,000 up.
Used products: 11.80	2.00	13.80.

Sources: GMAC Instruction Sheets, reproduced in Auto Financing Legislation, Hearings before the Antitrust and Monopoly Subcommittee, Committee on the Judiciary, U. S. Senate, 86th Cong., 1st sess. (Government Printing Office, Washington, D.C., 1959), p. 506.

president of GMAC, at a Senate hearing in 1956.\* He reported that GMAC paid its dealers \$3,901 in reserves for each new car actually repossessed in 1952, and these amounts in other years: 1950, \$4,662; 1951, \$4,318; 1953, \$3,499; 1954, \$2,026; 1955, \$2,521.

Explaining these figures, Stradella said that "the average dealer would be able to take that much of a loss before he was in the red." He observed further:

"Since the average amount initially advanced on new-car contracts is currently only \$1,878, the figures in the table show that the dealer's participation in the finance charge has been considerably more than sufficient to absorb losses taken on the resale of new-car repossessions during the past six years."

It is not justifiable to assume that these figures represent an unfair net profit for the dealer, because dealers have had a struggle, often a losing one, to make a profit on their overall operations.

These figures provide evidence that a substantial part of the true price of an automobile is submerged in the finance charge - because of practices initiated and perpetuated by the largest factory in particular.

Factories hold responsibility also for the packing of finance charges, above the standard reserves, which has distorted consumer rates even more.

#### Factory Loading of Dealers

As manufacturers moved into a period of expansion and over-production in the late 1920's, they adopted a sales policy of loading dealers with new cars. Dealers, in order to dispose of their heavy inventories, granted excessive trade-in allowances on used cars, on which they suffered great losses. Then to offset these losses, they increased the finance charge paid by the automobile buyer to include a larger participation for themselves.

As competition in the depression became more acute, such practices in financing "threatened in some localities to undermine the stability of the sales finance business...The pack, secured with the finance charge and invisible to the car purchaser, was collected by the finance company, but the dealer retained it immediately as part of his payment for the paper by the finance company."\*\*\*

The National Bureau of Economic Research study of 1940 observes that "in 1936-1938, according to the samples collected by the Federal Trade Commission, the packs allowed by factory-preferred companies took, on the whole, a larger fraction of total charges than did those allowed by the other companies."\*\*\*

Furthermore, this whole procedure was (and is) sometimes reinforced by certain special dealers who pre-plan to pack finance charges with the intention of advertising large trade-ins on used cars to promote the sale of new models. These special dealers are appointed by factories in strategic locations for the promotion and sale of their products; and their tactics force the majority of ethical dealers to follow the same practices in order to stay competitive.

\* Automobile Marketing Practices, Hearings, Subcommittee of the Committee on Interstate and Foreign Commerce, U. S. Senate, (84th Congress, 2nd Session, pt. 1, Government Printing Office, Washington, D.C.), p. 814.

\*\* David F. Cavers, "The Consumer's Stake in the Finance Company Code Controversy", Law and Contemporary Problems, (School of Law, Duke University), April 1935, p.204.

\*\*\* Wilbur C. Plummer and Ralph A. Young, Sales Finance Companies and Their Credit Practices (National Bureau of Economic Research, New York, 1940), pp.282.

TABLE II-23  
FORD MOTOR CREDIT COMPANY FINANCE RATE CHARTS  
 (Consumer rates, Chicago and Dallas, in effect 1960)

<u>CHICAGO</u>		
<u>CHART NUMBER</u>	<u>FINANCE RATE</u>	<u>USAGE OF CHART</u>
L 364559	4.5%	New Cars
L 36559	5.0	New Cars
L 365559	5.5	New Cars
L 36659	6.0	New Cars
L 366559	6.5	New Cars
L 36759	7.0	New Cars
L 367559	7.5	Used Current and 1 year
L 36859	8.0	Used Current and 1 year
L 308559	8.5	Used Current and 1 year
L 30959	9.0	Used 2 and 3 year
L 309559	9.5	Used 2 and 3 year
L 301059	10.0	Used 2 and 3 year
L 2410559	10.5	Used 2 and 3 year
L 241159	11.0	Used 2 and 3 year
L 2411559	11.5	Used 4 year and older
L 241259	12.0	Used 4 year and older
L 2412559	12.5	Used 4 year and older
L 241359	13.0	Used 4 year and older
L 2413559	13.5	Used 4 year and older
L 241459	14.0	Used 4 year and older
<u>DALLAS</u>		
L 36560	5.0	New Cars
L 36660	6.0	New Cars
L 366560	6.5	New Cars
L 36760	7.0	New Cars
L 367560	7.5	New Cars
L 36860	8.0	New Cars
L 36860	8.0	Used Current and 1 year
L 308560	8.5	Used Current and 1 year
L 30960	9.0	Used Current and 1 year
L 309560	9.5	Used Current and 1 year
L 301060	10.0	Used 2 and 3 year
L 241260	12.0	Used 4 year and older
L 2413560	13.5	Used 4 year and older

Source: Ford Motor Credit Co. charts for dealer use.

Note: The rates above apply to the principal balance inclusive of a credit life insurance premium (39 cents per \$100.). The chart number is dissected as follows, using L 366560 as an example: L indicates that a credit life insurance premium is recited in another column, an addition to the finance charge. The first two digits, 36, indicate maximum term length of 36 months; the next two digits, 65, indicate that the finance charge is 6.5% add-on per \$100 per annum; the last two digits, 60, indicate the year, 1960.

Factory-Picked "Stimulators"

To help enforce their quota demands, major factories appoint key dealers in strategic locations to set the competitive pace for other dealers. So established has the practice become that the vocabulary of the trade has this special name for factory-picked pace setters: "Stimulators."

The minority of stimulators, with their seemingly generous "deals," force the majority of other dealers to follow suit to varying degrees, and to depend unduly on financing income, or to suffer in sales results both from their own standpoint and in rating by the factory.

An instance of the factory-appointed "stimulator" was told by the president of the National Automobile Dealers Association in a speech at the 1957 convention of the American Finance Conference:

"Recently in an eastern metropolitan market, a very successful dealer representing one of the volume lines decided to sell. He found an excellent buyer, but his (factory) zone office said, 'No'. ....They brought around a sharp stimulator and said, 'Here's your buyer'. That settled that.

"But in this case, not quite. Before the sale could be completed, the finance company discovered the proposed purchaser had nearly \$150,000 out of trust and closed him up... It provoked a few chuckles among the substantial dealers, but...there is nothing humorous about a finance company's losing more than \$100,000.

"Unfortunately, this story does not have a happy ending. The zone did not relent and give its approval to the desirable applicant. Instead it located another fast operator who had money and turned the dealer over to him.

"The new dealer is now selling cars through misleading advertising and shady sales methods and is destroying the fine reputation formerly enjoyed by that dealership.

"Just so long as our manufacturers continue to appoint dealers of this sort, just so long will it be impossible to rebuild our industry as we must. We hope this will soon be a thing of the past."

In July, 1960, before the Automotive Trade Association Managers another prominent dealer made this comment, as reported in "Automotive News": "The quicker we can get rid of the stimulator-type of dealers the factories have put in, the quicker we will get back to quality advertising."

It can be argued plausibly that if the trade-in or discount roughly balances any higher-than-average finance charge, and the dealer does not profit excessively, it does not really matter to the customer how the total sale price is broken down. Even when such a balance has been struck, however, the customer who later takes another look at his deal is not likely to see the balance but simply an overcharge for his credit.

In such a trading climate, moreover, it also happens that a fair profit balance for the dealer from sales to all customers does not necessarily mean a fair balance for each individual customer. Sometimes one customer's over-charge on financing makes up for, not some other part of his own deal, but for a slim profit on someone else's deal.

Such is the climate fostered and aggravated by the merchandising practices of the factories.

GMAC Finance Rates are not Low for Its Kind of Service

For the task which it performs, General Motors Acceptance Corporation is a relatively high-rate company.

On the basis of its financial pyramiding alone, GMAC should be able to charge 2.08% less than a large independent on a simple-interest basis (as explained at pages 8 and 9 herein.)

This advantage is convertible to a difference in dealer discount charge of about \$1 per \$100 whereas the actual difference which Ford's spokesman alleged is only 50 cents per \$100.

On top of this difference between GMAC's situation and independents' are other exclusive GMAC advantages which should bring down its rates even more than \$1 under those of other large companies.

Principal among these additional advantages are GMAC operating policies which 1) channel to it the "cream" of the dealer's finance contracts and which 2) require the dealer, under recourse arrangements, to assume responsibility -- and therefore some cost -- for collectability.

#### GMAC Statements of Policy

GMAC is its own best witness with respect to its policy of securing the so-called "cream" contracts. As early as 1934, George Berkhart, GMAC vice president, speaking for his company at a meeting with NRA Code authorities, said, "I admit we have the cream of the business, and we are going to hold on to it".\*

The board of directors of General Motors requires GMAC to set up its finance plans so as to induce its dealer to guarantee the time sales contract.

On this subject Mr. Berkhart said "...no recourse...is incompatible with our policies and General Motors'..."\*\*

The above represents the character of General Motors' policies in 1934. In 1959 in a filed statement before the Senate Committee it had this to say -- (at page 443):

"In the best interest of the economy, GMAC believes that it is desirable for the dealer to be responsible on a time sale transaction to a degree sufficient to assure that he exercise his judgment, along with that of GMAC, as to the credit of the borrower, the collectability of the account and the terms of the sale. To the degree that the dealer takes such limited responsibility, GMAC believes that he is entitled to receive a sufficient portion of the finance charge to protect him against the risks assumed and to reimburse him for his added costs. Some dealers prefer to establish a ceiling on their maximum liability for losses on reposessions rather than to have an unlimited commitment. They may do so by separate agreement with GMAC, but their interest in the collectability is still maintained. GMAC believes that this approach makes for better credits at lower costs." (Underscoring supplied.)

The dealer, knowing that a substantial part of his contracts must go to GMAC, will naturally select the cream contracts for sale to GMAC with his guarantee and sell the marginal contracts to other finance companies without recourse.

GMAC's policies of pre-empting "cream business" and requiring dealer recourse reduce its service burden -- and consequently reduces its operating costs as compared with companies that must provide a full service.

Some impact of this advantage can be inferred in this striking discrepancy:

In 1959-60, there were 2,504 independent sales finance companies to serve a total of 20,602 non-General Motors new-car dealers, or a ratio of 1 office to 8 dealers. In contrast, GMAC had 272 offices to serve 14,427 dealers, or a ratio of 1 to 53.

Ford's testimony before the Senate in 1959 took some, though not adequate, cognizance of the

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\* Minutes of Meeting held in the Office of Division Administrator Leighton M. Peebles, in Room No. 3309, Department of Commerce Building, Washington, D. C., 10:30 A.M., October 8th, 1934.

\*\*Afternoon meeting on the same day with Code Authorities.

difference in GMAC's operations (at page 199 of the hearings report):

"They are in part due to the way GMAC operates, in the sense that it has fewer offices, larger offices, and it doesn't take quite as much highly marginal, high-rate business as some of the other companies."

At another point the Ford witness conceded that some General Motors dealers "may think they get better service" from an independent.

#### GMAC Discount Rate Does Not Cover All Costs

Thus from Ford's and GMAC's statements it is demonstrated that GMAC, for the rate of discount charged the dealer, does not perform all the functions nor assume all the responsibilities in connection with the time sale of an automobile.

GMAC brackets the dealer's responsibility, "his added costs", and the finance reserve. This reference discloses that the dealer performs a part of the service and that a reserve for the dealer is added to the GMAC net rate to arrive at the total rate charged to the time buyer.

If the dealer chooses to reduce or eliminate the "added costs" referred to by GMAC and pass some or all of the "added cost" to an independent finance company which assumes the responsibility for "exercising credit judgment" and for "the collectability of the account", then such dealer may conceivably in the "interest of his economy" pay 50 cents per \$100 additional discount for the added service performed.

The dealer, it should be kept in mind, is a well-informed businessman. In a free market, he negotiates the amount of discount in a setting where several finance companies are competing to purchase his contracts and offer their varying services.

#### Wholesale rates

Ford dealers using independent finance company wholesale financing were at a disadvantage of at least 1/2% as against GMAC rates for GM dealers, Ford's spokesman told the Senate in 1959.

At page 530 of the hearings, the company cited a survey on this subject among 80 dealers. Wholesale costs were listed as follows: 4 dealers at 4%; 60 at 4-1/2%; 10 at 5%; 2 at 5-1/2%, 4 at 6%.

The prime rate of money at the time was 4%. When a finance company qualifies for the prime rate (not all do qualify) and obtains a line of credit, it is required to leave a minimum of 15% compensating balance in the bank and be out of debt at least 60 days out of the year.

Such restrictions have the effect of increasing the nominal prime rate of 4%, to an effective rate of 5%.

Of the 80 dealers mentioned, 74 were borrowing at or below the effective rate paid by the prime companies of the country. Sixty-four dealers of the 80 were borrowing at from 1/2% to 1% below the effective rate; only 6 at from 1/2% to 1% above.

Ford Motor Company itself could not have borrowed money from banks as cheaply. Only a subsidized factory-owned finance company could give a better rate than those illustrated, and subsidies have to be paid by some customers, sometime, somewhere.

Ford stated that GMAC furnishes this wholesale at a 1/2% loss than the lowest rate provided in the Ford group, or in other words, 30% below the effective prime rate given only to the major corporations of the United States.

In a statement filed in the same hearings, General Motors stated, that "GMAC's rates which are applicable to short term financing of dealer stocks are set on the basis of its short term money costs. GMAC finds wholesale financing at its rates a good and profitable busi-

ness." Could this possibly be true?

A chart filed by GM shows GMAC's money cost for 1957 was 3.85%. For this same year its operating expense and provision for losses equalled \$2.84 for each \$100 of borrowed money and common capital and surplus. Most of its funds are borrowed, therefore, each \$100 of these funds results in:

Interest	\$3.85
Operating Expense and Provisions for Losses	<u>2.84</u>
Total Annual Cost per \$100*	\$6.69

Comparing the \$6.69, which is the absolute cost without profit of each \$100 that GMAC furnishes, with the rate that GMAC charges dealers stated by Ford to be somewhere between 3-1/2% and 4% does not support General Motors' statement that the wholesale is profitable to GMAC.

#### GM, Not GMAC, Profits on Wholesale

It is profitable to General Motors in putting the competitive squeeze on the dealers of other automobile manufacturers, but certainly not to GMAC.

This is the sort of consideration which Ford must have had in mind when it told the U.S. District Court in 1946:

"Nor is it (Ford) in a position to absorb the entire cost of floor planning of new cars and trucks for its dealers, while General Motors Corporation through General Motors Acceptance Corporation can do so. This constitutes a serious handicap to this respondent in the market for new dealers."

Subsidized factory wholesale rates, besides making it easier to load the dealer with excessive inventory, also provide an exclusive advantage in helping to sustain a make of car, and its dealers, when it encounters sales resistance.

Such a make, when it can draw upon the strength of a factory finance company which is continuing to get retail financing business through the company's other lines, can survive competitive storms that would bring disaster to dealers and a manufacturer without such subsidy.

It is axiomatic that all finance companies supply wholesale financing below cost as an adjunct to the retail financing service. But independents cannot match the subsidy of a factory. They are able to provide low wholesale rates only when they receive sufficient volume of retail time contracts to pay for the special wholesale rate.

When dealers for slow-moving lines do not generate enough retail paper, they must obtain their wholesale credit at higher rates of interest. This cost, coupled with the factor of cars remaining unsold for a longer time, makes it impossible in many cases for the dealers to continue the franchise. In such cases, they cannot pass on the higher costs to the customer and still compete with General Motors and other dealers whose cars are selling faster.

The task of the independent finance company is different from that of the captive company particularly one owned by a large manufacturer. The independent finance company finances the wholesale and retail of the rest of the auto industry -- a cross-section that includes slow selling cars in a greater proportion. Cars that sell slowly when new, sell slowly when liquidated as repossessions, and result in higher losses to the independent finance companies.

\* It might be argued that wholesale operating costs are not as great as the average. But GMAC says the business is profitable. Using the 1957 mix of capital and borrowed money and money cost, making no allowance whatsoever for operating expense, GMAC would still have to have charged 5.95% on its wholesale to realize the profit earned in 1957.

The independent's task is different from that of GMAC, so all the cost factors are different. The loss on subsidized wholesale is greater, the loss ratio on repossessions is greater, the cost of servicing marginal accounts is greater so the rate of discount to the dealer must be greater than the rate charged by GMAC.

The task and burden of the independent was increased when the banks entered the auto finance business and concentrated on "creaming off" much of the better risks while avoiding a proportionate share of the same dealer's wholesale volume.

If it were not for this artificial wholesale financing market intensified by General Motors, and now engaged in by Ford, more normal interest rates would prevail in the inventory of automobiles.

In a free market General Motors' dealers would be paying the same rate as others. Other dealers could also afford to inventory cars, pay the competitive interest rate, and be able to pass the cost on competitively in the market, which they cannot do presently.

GM's subsidized wholesale rates obviously stultify competition. It should be kept in mind that Ford needs a finance company only because General Motors has a finance company. Among the other manufacturers, those who need a finance company the most are the least able to obtain one. Unfair competition can be overcome only by prohibiting the continuance of well-entrenched privilege.



FACTORY FINANCE COMPANIES ARE INCOMPATIBLE  
WITH TRULY COMPETITIVE AUTOMOBILE INDUSTRY

The potency of General Motors' captive finance company in holding a monopoly power over its dealers and the automobile industry is clearly visible in a summation which Ford presented to the U.S. Supreme Court in 1946.

The basic situation which Ford described then is much the same as now -- except that GM now has enjoyed more years of exclusive privilege, with only one other company able to share it in part, and the number of manufacturers has narrowed to five.

What Ford Told Supreme Court

Here is what Ford told the Supreme Court:

"These three companies manufactured about ninety percent of all cars sold and the competition of each of them with the others was aggressive.

"The influence of the manufacturer on the financing arrangements of its dealers was an important weapon in this competitive battle.

"About sixty percent of all retail sales were financed. A larger percentage of wholesale sales were financed.

"The finance charges became a part of the cost to the purchaser. The lower the charges and the more lenient the terms of repayment, the greater was the market for cars.

"The more reasonable the collection practices of the finance company chosen by the dealer, the greater was the good will of the manufacturer, under whose trademark the dealer was given a franchise to operate.

"The more liberal the wholesale financing of the dealer organization, the larger were the dealers' operations.

"The experience of the manufacturers had been that, in the absence of their influence in these financing arrangements, independent institutions, motivated by desire for profit from and safety in their investments rather than by desire to increase car sales and manufacturers' profit, would not by competition between themselves achieve the same results."

The subordination of retail and wholesale practices to factory sales and profits is both expressed and implied in the above statements by Ford. It corresponds with the following

observation in a GMAC Confidential Report of 1925: "It must be obvious that the parent corporation can hardly justify investment of its capital in a corporation designed primarily as a competitive discounting or financing agency, fundamentally designed as an independent aid to distribution and sales."

Although not spelled out, the basis of the only effective remedy for equalizing competition among auto manufacturers, for the benefit of the public, is contained in Ford's same statement of 1946:

"Because of this situation the changes (divorcement) contemplated by the Government had to be imposed on all three manufacturers to substantially the same extent and at nearly the same time."

"Otherwise, any benefit that might inure to the public from the changes would be nullified by the injury that might result to the public from the disturbance of the equality of competitive conditions as between the manufacturers."

"This would have been simple had all three manufacturers consented to a decree, but a problem arose when General Motors (manufacturing 47 percent of all cars sold) refused to consent to a decree while Chrysler and Ford (Manufacturing 24 percent and 19 percent respectively) were willing to do so."

Ford pointed out the disturbance of competition and public injury that would result if changes in factory-financing relationships did not apply to an equal extent to all and did not take place at the same time. Ford's entry into the financing field does not make competition less unequal for those who cannot follow. And GM's and Ford's position stands as a barrier to any possibility of new manufacturers entering the business.

George Romney, president of American Motors Corp., which has proved to be a hardy competitor in an industry dominated by giants, said publicly in 1958:

"The maintenance of a minimum number of passenger-car companies for adequate competition will require new births in the industry. Unless the present course is changed, the ultimate result could be that but a single company would remain."

Divorcement of factory finance companies will prevent stagnation in the automobile manufacturing business, a certain result if the giant manufacturers own their own finance and insurance subsidiaries, and crowd out smaller manufacturers.

Extension of factory financing can force independent finance companies out of business, and they would not be available to handle the financing of the sales of a resurgent automobile manufacturer or new manufacturers.

The power to administer auto and finance prices in the past would be small compared to what further concentration would afford. The possibility of lengthening out the terms of payment rather than competing on products and the bold kind of pyramiding that GMAC has pursued, would present serious threats of inflation through the tools of consumer credit.

On the other hand, GMAC can operate as an independent. This possibility is recognized by GMAC in a 1961 prospectus for debentures, in which it observes that the 1961 bills proposing divorcement, "like the earlier ones, would not prevent the company from continuing to operate, but would, if enacted, provide that General Motors Corporation may not own the company."

An independent GMAC would add financial support to the other automobile manufacturers. The General Motors' dealers financed by GMAC would be more willing prospective dealers of other manufacturers because they could take GMAC service with them in the move. The market for good dealers would be unfrozen and be available to all manufacturers on a free competitive basis.

True, the competition of GMAC, then turned on in full and in the whole automobile market, could be strenuous for the hundreds of independent finance companies. Yet it is this choice of all manufacturers being forced to organize a finance subsidiary. The divorcement of GMAC

and insurance affiliates would in time bring the sales finance industry into balance. GMAC, then on its own, would have to adjust down to a normal and safe policy with respect to its pyramiding. Others perhaps would be permitted higher borrowing ratios on their merits.

Rates would be truly competitive, for GMAC would not be afraid to use the full power of any legitimate leverage because of the consequences of manufacturing monopoly.

Automobile manufacturers would be confined to the manufacturing business, their basic business. Sales finance companies without exception would function as sales finance companies.

II. FACTORY-FINANCING  
SUBSIDIES - THEIR  
MOBILITY AND IMPACT

Outline and Summary: FACTORY-FINANCING SUBSIDIES - THEIR MOBILITY AND IMPACT

A Senate Inquiry into the Sources  
of General Motors' Dominant Power  
'Tantalizing Implications'

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Economics of manufacturing, marketing and financing are all one under GM's dominance of the auto industry. This leads to control of markets for various products and services. Control exercised by subsidizing one at expense of another -- shifting subsidies.	1
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#### COSTS, DEMAND AND PRICE POLICY

Senate Antitrust Subcommittee compares and contrasts pricing of GM and utilities. 12

GM profit formula explained. 13

GM realized profit is a residual only to extent actual costs, sales differ from forecast levels used to establish prices. It is predetermined net return. Differs from competitive market. 14

GM standard volume is 80% of rated capacity, or 180 days production annually. Unit costs figured on basis of standard volume. 14-15

GM manager's ultimate responsibility is divisional profits. 15

1955 net earnings after interest and income taxes would recoup entire GM net plant investment in two years. This record equaled or bettered in 12 of preceding 20 years. American Institute of Management calls GM rate of return "phenomenal." 16

END OF QUOTATIONS FROM SENATE REPORT 16

\* \* \*

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Key facts from Senate report will be supplemented herein with additional facts not brought out by the Senate in its search to answer: What accounts for GM power and strength? 17

Three key facts from the Senate reports:

1. GM has monopolistic power to set auto industry prices.
2. GM has strong, by far largest, dealer organization.
3. GM has power of subsidy latent in obscurely reporter operations.

#### GMAC's Capital Subsidy from GM.

GM factory divisions -- plus meeting or exceeding their own 20% net return target -- carry profit, tax load for at least half of GMAC net worth. Customers of factory divisions pay this subsidy. 19

#### GMAC Privilege from Institutional Lenders.

Indenture agreement between GMAC, life insurance companies and other institutional lenders gives GMAC exclusive privilege of being substantially undercapitalized, because it is owned by GM. GMAC capital investment is half or less of that required for conventional sales finance company. 20

In 1955 GMAC common net worth was 4.85% of total assets, or borrowing ratio of nearly 21 to 1. Assets at risk were 96.6% of total assets, or risk-asset ratio of 20 to 1. When national banks risk assets reach 6 or 7 to 1 of net worth. Comptroller of Currency asks them to increase net worth. 21

CAPITAL COST: MOST EXPENSIVE INGREDIENT. 21

Capital dollars more expensive than borrowed dollars, since owners take greater risk. Also, capital dollar subject to tax while interest on borrowed dollar is tax deductible. Capital dollar costs more than doubled since 52% federal income tax passed. Every GM net income dollar calls for more than one dollar to be collected for income tax. 22

GMAC capital cost is \$41.67/\$100 of capital -- target profit of \$20/\$100 and tax of \$21.67/\$100. Borrowing cost is \$3.22/\$100; operating cost is \$2.96/\$100. GM, GMAC capital dollar is 13 times more costly than borrowed dollar. Operating, interest costs for GMAC about equal in per-unit weight. 23-24

Capital cost reduction by any type of subsidy is most effective way to competitive advantage through reducing finance charges. 24

How Capital Subsidy Works.

Rather than cutting its return from GMAC, GM has used more subtle form of capital subsidy -- withholding capital in GM that should be in GMAC. This means GMAC needs collect only half the total capital-cost dollars that it would otherwise. Since income tax is half of capital cost, this withheld capital subsidy gives GMAC competitive advantage equal to tax-free profits. 24-25

Examples using both 1955, 1959 figures show that the profit-and-tax which the capital withheld by GM had to earn in GM factory divisions equaled 1% of factory civilian sales. This would be \$40 added to price of \$4,000 car for the benefit of the GMAC capital subsidy. 25-26

GM Capital Subsidy Amounted to 2% of GMAC Average Outstandings. 26

GMAC, AND GM's MARKETING STRATEGY. 26

GM does not pass this subsidy along to time buyers, but used it in marketing strategy. This and other subsidies converted into GM-GMAC subsidies to dealers, representing different pockets of income, all exclusively controlled by GM and its finance and insurance subsidiaries. 26-27

Subsidies applied at retail sale level to influence trade-in, finance costs, later insurance settlements. At dealer relations level, in competition

between GM and other manufacturers for dealers, GM can subsidize wholesale rates on new cars, can give delayed income for repair and replacement of parts under insurance coverages, and can give insurance commissions wherever legal. All GM controlled by GM subsidiaries.

27

Independents cannot meet this due to not controlling any dealer franchises. GM, and partly Ford, are only manufacturers who have any tools other than franchise.

28

#### GM Subsidies Serve GM.

GM subsidies serve GM, not dealers or auto buyers. Used to help factory sell factory-determined volume of cars at guaranteed profit. GM dealer subsidies enable GM to hold largest number of dealers, most effective ones. Even so, dealer profit modest compare with factory. Auto buyer get only half of subsidy in financing charge, still pays total price which guarantees GM fixed profit.

28-29

#### Subsidy of Interest Cost.

29

Capital dollars most expensive, but borrowed dollars most numerous. GM also subsidizes interest costs, 4 ways:

1. Lower nominal interest rates than independents can obtain.
2. Lower effective interest rates on bank borrowings due to lower compensating balances required.
3. Greater ratio of low-interest commercial paper.
4. Less interest-bearing funds for payments to the factory.

29-31

#### Subsidy of Operating Cost.

GM has gigantic subsidy of final remaining cost--operating. GM power over franchised dealers guarantees GMAC large volume of business. GMAC operating expense is primarily to administer business, rather than to acquire, hold it.

31

#### Insurance Subsidies.

31

GM, GMAC insurance subsidiaries have "abnormally low operating costs" due to using GM, GMAC personnel; GM dealers as substitute for agents. Result is subsidized insurance, spectacular profits. This pits subsidized, captive-market competition against independent insurance companies and agents, independent garages, independent manufacturers and merchandisers of auto parts, accessories.

31-34

#### SUBSIDY VS. SURVIVAL

While no one may fully comprehend all workings of subsidies, dealers of all manufacturers are aware of everyday workings. Result is that effective

dealers go over to GM on a one-way street. No manufacturer can thrive or survive without strong dealerships.

34

Only GM of all auto manufacturers has well-entrenched finance, insurance subsidiaries. Ford, Chrysler once had captive finance companies. Ford now setting up new finance and insurance subsidiaries, following GM pattern.

34-35

If sales financing becomes factory adjunct, independent finance companies, banks will be forced out. Factory sales policies, quotas will replace soundness of credit as basic control. If captive finance company becomes requirement for auto manufacturing, result will be fewer manufacturers, increasingly narrower choice for consumer as to financing, insurance, kind and price of autos.



A Senate Inquiry into  
the Sources Of General Motors' Dominant Power: "Tantalizing Implications"

The economics of manufacturing, marketing and financing processes are all interrelated so completely that they are one indivisible whole--as General Motors Corporation has developed them in its dominance over the auto industry.

Integration of these processes through the use of corporate subsidiaries and divisions offers opportunities for the control of sales outlets and the markets for the basic products, as well as accessories, replacement parts and even related services. This control is effectively exercised by subsidizing one process at the expense of another, and maneuvering the subsidies forth and back strategically and tactically, depending on current needs and advantages.

The 1958 Report of the Senate Subcommittee on Antitrust and Monopoly\* in its study of administered prices in the automobile industry, revealed the committee's success in obtaining important information disclosed by top GM officials with respect to their long established price policy formula: A basic part of all prices is a target of 20%-after-tax profit on net worth.

The Report also disclosed the Subcommittee's lack of success in obtaining separate operating and financial information on the several divisions of General Motors in the senator's search for interrelated subsidies.

The GM officials refused to reveal divisional facts for the most part, but sufficient information was disclosed to show conclusively that GM can wait over a 10-to-15 year span for the financial fruition of a division, while less strong and patient competitors may be eliminated.

Excerpts from the report unfold the explanation, as follows (headlines and footnote numbers from the report; all underscoring ours):

"INTRODUCTION"

\*\*\*

"Over a long-term period there have occurred fundamental changes in the automobile industry's structure, principal among which have been (a) a persistent and continuing decline in the number of enterprises and (b) a long-term increase in the relative importance of the leading producers. The rise in the position of General Motors has been particularly striking. From 20 percent of the new-car registration in 1925, General Motors' share rose to 45 percent in 1957 and to 50 percent in the first quarter of 1958. General Motors has derived its strength from a number of sources. It has long been regarded as an efficient, well-organized company. It has been active in putting on the market a number of important technological innovations, such as the Hydra-Matic drive. It has a strong dealer organization which is by far the largest in the country. It has ready access to sources of capital and credit. But General Motors derives its strength from a number of other and less well-recognized sources. To a much greater extent than any of its competitors, it operates in a variety of industries other than automobiles, such as railroad locomotives, household appliances, buses, earth-moving equipment and others. The defense contracts which it has received have, by their very nature, been an important source of strength. The manner in which trade-in values on used cars are determined may also have contributed to General Motors' growth.

"Regardless of the causes, however, the paramount structural characteristic of the automobile industry since the late 1920's has been the increasing dominance of General Motors..."

\* \* \*

\* Administered Prices Automobiles, Report Together With Individual Views of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, Senate "Study of Administered Prices in the Automobile Industry," (85th Cong., 2nd sess., Government Printing Office, Washington, D. C., Nov 1, 1958).

"Because of its increasingly dominant position, the level of automobile prices has come to be largely determined by the pricing methods and policies of General Motors. In setting its prices, General Motors seeks to attain a target goal of 20 percent rate of return on net worth after taxes at a predetermined level of production, or standard volume. The amount of profit per car, needed to yield the desired rate of return at the standard volume is incorporated as a cost in arriving at the price level. When actual production exceeds standard volume, as has been true during most of the postwar period, the actual rate of return exceeds the target. As compared to its target of 20 percent, General Motors' actual rate of return after taxes on net worth, during the period 1948-57 averaged 25 percent."

\* \* \*

"THE SOURCES OF GENERAL MOTORS' DOMINANCE"

\*\*\*

"Efficiency"

"General Motors enjoys an enviable reputation both within and without the automotive industry as an efficient firm..."

"There is one aspect to this question of efficiency, however, which is open to scrutiny. To what extent can General Motors' position of dominance be traced back to the requirements of obtaining optimum plant efficiency? By the term 'plant' is meant 'a related complex of facilities for manufacturing components normally "integrated" by the assembler and then assembling them.' <sup>21</sup> Principal among these components are engines and bodies. The question is, How large must such a plant complex be in order to obtain all, or at least virtually all, of the possible economics of production?"

"...Mr. Romney (American Motors Corporation) stated:

'...It is possible to be one of the best without being the biggest.'

'...my point is that when you get up to 180,000 to 200,000 cars a year, the cost reduction flattens out, from a manufacturing cost standpoint, and from 300,000 to 400,000 on up it is a negligible thing.'

"...The output during the 1957 model year of each of General Motors' automotive divisions is as follows:

Number of Cars Produced, Model Year 1957			
Buick	405,000	Oldsmobile	384,000
Cadillac	147,000	Pontiac	334,000"
Chevrolet	1,553,000		

\* \* \*

"But while these (Bain and Romney) estimates, supported as they are by the actual showings of the Pontiac, Buick, and Oldsmobile divisions, do not in any way disprove the widely held impression that General Motors is an efficient producer, they do suggest that a comparable degree of efficiency in production can be attained by an enterprise well below the size of General Motors.

"An indication of how much below, expressed in financial terms, was provided to the subcommittee by Mr. Romney at the request of the chairman. These estimates are based on current reproduction costs for building, machinery, equipment, and standard tools and dies, plus organizational expenses and estimated first-year losses. Mr. Romney chose to submit his estimates in terms of an enterprise producing 250,000 automobiles a year. His estimate of the total capital requirements for a new company with this production breaking into the market for the first time is \$576 million..."

\* \* \*

<sup>21</sup> Joe S. Bain, Barriers to New Competition, Harvard University Press, 1956, p.244."

"...In this respect, the figure submitted by American Motors tend to corroborate, in general, the conclusions of Professor Bain.

"How does this total capital entrance requirement of \$376 million compare with the total assets of General Motors today? At the end of 1957 General Motors' total assets were \$6.8 billion. If it is assumed that the ratio of General Motors' automotive to non-automotive operations is the same in assets as it is in costs (65:35), the assets of General Motors which are applicable to automobile production would be \$4.5 billion. This is more than seven times Mr. Romney's estimate of capital entrance requirements. Actually, the discrepancy is even greater since an exact comparison would involve contrasting General Motors, not with a new entrant, but with another existing company. For an existing company already operating, capital requirements would naturally be much lower than the American Motors estimate. The organizational expenses, including advertising expenses and losses prior to the second year of operations, could be eliminated, bringing the total down to \$463 million. Furthermore, a substantial portion of the buildings and machinery would already be in hand and would be partially written off against depreciation.<sup>30</sup> Nonetheless, even aside from this consideration, the difference between the capital requirements for a new entrant and General Motors assets engaged in automotive production is so great as to leave little doubt but that the greater part of General Motors' size and dominance is due to factors other than the technological requirements necessary to secure optimum plant efficiency."

After making the above analysis of efficiency, the report of Senate Antitrust and Monopoly Subcommittee continues with other important considerations in its attempt to discover reasons for General Motors' unusual strength and dominance.

Further excerpts from the Report follow (again, with our underscoring):

#### "Innovations"

"Along with the necessity for efficiency, the principal economic rationale for large corporate size is the belief that society is now dependent upon large enterprise for technological progress..."

\* \* \*

"It should be evident from the above that General Motors' advantage over Ford and Chrysler in creating innovations must be regarded as virtually nonexistent. There remains the further question of contributions by companies outside the Big Three. Donald A. Moore states that 'the small producers have done more than a proportionate share of pioneering.' In so doing, he continues, 'they seem to perform an important function in the market, displaying a competitive vigor born of necessity.'<sup>51</sup> Upon request of the chairman, the American Motors Co. submitted to the subcommittee a list of innovations originating with the smaller automobile companies."<sup>52</sup>

\* \* \*

#### "General Motors' Conglomerate Operations"

"To a far greater extent than its competitors, General Motors is engaged in industries other than those involved in the production of its principal products..."

<sup>30</sup> Reflecting these considerations the total assets of American Motors Corp. at the end of its fiscal year on December 30, 1953, were \$233 million. Moreover, a minor portion of these assets are devoted to the production and marketing of refrigerators (Kaiservator) and other appliances."

<sup>51</sup> The Structure of American Industry, edited by Walter Adams, Macmillan & Co., N.Y., 1955, p. 309."

<sup>52</sup> Letter from American Motors Co., dated March 4, 1958, reprinted in the Hearings, Appendix, p. 3812."

\* \* \*

"During the subcommittee's hearings, inquiries were made as to whether profits made by a General Motors' division in a sheltered market were used to subsidize losses incurred in more competitive areas. Senator Kefauver suggested that, 'as against your competitor in the automobile industry, ' General Motors--with its more diversified operations--was favorably situated to take such steps. Mr. Curtice appeared to deny this when he replied:

'I think all of our products sell on their own merits, and as indicated by the earlier chart you had on the automotive industry, we have a full-sized job to maintain the current level of our participation in the market. 66'

"Later this question was raised again by counsel for the subcommittee:

'Mr. Dixon. Mr. Curtice, between the years 1946 and to date, has General Motors operated ny of its automotive divisions at a loss?'

'Mr. Curtice. No, sir.'

'Mr. Dixon. Any division, any one of its automotive divisions?'

'Mr. Curtice. Not to my knowledge.'

'Mr. Dixon. Have you operated any nonautomotive divisions at a loss?'

'Mr. Curtice. Two.'

'Mr. Dixon. What were those?'

'Mr. Curtice. I do not wish to disclose, for competitive reasons.'

'Mr. Dixon. Will you examine your books and records and furnish this committee with the year and the name?' 67

Mr. Curtice refused to comply with this request on the ground that it was 'confidential information'; and reiterated his company's earlier refusal to supply any 'breakdown of the divisional operations on a separate basis.'

"Subaequent to the hearings, General Motors filed a statement with the subcommittee on this subject..."

\* \* \*

"The statements also contained other information which is far from clear but suggest evasive and rather tantalizing implications. The notion of confidentiality is carried so far that it is not made clear whether the references are to automotive or nonautomotive divisions."

\* \* \*

"The point of significance here is that all of General Motors' products did not sell 'on their own merits.' These intermittent losses may not have appeared of importance to the company precisely because of its size and the extent of its diversification. Were a smaller company, with all of its sales confined to a single industry, faced with losses of this magnitude, it might well spell the difference between survival and collapse. General Motors can look with equanimity upon divisional losses for a year or two; the small independent, with limited financial resources, is face to face with bankruptcy."

\* \* \*

(From a statement filed by GMs)

"...It may be noted in connection with the foregoing, that for the aggregate period of 12 years, 1946 through 1957, every General Motors division operated at a profit.72"

\*66. Hearings, p. 2510."

\*67 Ibid., p.2599."

\* 72 Hearings, appendix, p. 3914."

"The point is, however, that the truck division in question did incur a loss and after the 'accounting writeoff' made only a 'small profit' which might not have been sufficient for a company engaged only in truck production to remain in business. The 'small' return from this truck division was obviously offset by high profits elsewhere in the company.

"The statement stresses the fact that 'for the aggregate period of 12 years' from 1949 through 1957, 'every General Motors divisions operated at a profit.' But the question is: What profit did each division make each year? The smaller single-line company competing with General Motors in any one of its industries must be concerned with what has happened to its profits in the last quarter, the last 6 months, the last year. It is the exceptional small entrepreneur who need concern himself only with his return in terms of an aggregate for a 12-year period."

After examining General Motors' multiple-based financial might, the Senate subcommittee produced significant evidence of GM dominant power in setting the price levels for the auto industry. Following are excerpts on this subject from the subcommittee report:

#### "PRICE COMPETITION"

\*\*\*

#### "A Study in Contrasts: Ford in 1920 and 1957"

"The change that has occurred in the pricing practices of the automobile industry is epitomized in two events involving the Ford company. One occurred in 1920, the other in 1957.

"In 1920 Ford was the largest unit in the industry, accounting for nearly half of the total automobile business. Along with the sagging economy of that year came a marked decline in automobile sales. Henry Ford's reaction is graphically portrayed by Nevins & Hill in their authorized history of the Ford Motor Company:

\*\*\*

"(Ford) called a conference of high Ford Motor Co. officials (Edsel, Kanzler, Sorenson, Knudsen, Ryan, William H. Smith among them), informed them of his intention, and bade them plan reductions. They worked out a set of figures. Ford glanced at these, and announced abruptly that the cuts were too small.

"They tried to argue with him, and he got mad. He pulled out a piece of paper with penciled prices on it and said "There, gentlemen, are your prices." The men were astonished. They told him the company would go broke on those prices. He asked for the paper back and reduced 2 cars \$5 more.

"The first leader in the industry to act, Ford startled the Nation and his competitors on September 21 by the size of the cuts, some of which were:

'Unit	Old Price	New Price	Amount of cut
Chassis	\$525	\$360	\$165
Runabout	550	395	155
Touring car	575	440	135
Coupe	850	745	105
Sedan	975	795	180 1"

\* \* \*

"The second event--indicating the radical character of the change that has taken place--occurred on 1957 models.

"On September 29, 1956, Ford announced its suggested pricelist for its 1957 models. For some time previous there had been rumors in the industry that prices would be increased 5 to 7 percent, the announced purpose being to help maintain 'a competitive pricing position for higher cost producers such as Chrysler, American Motors, and

"1 Allen Nevins & Frank Ernest Hill, *Ford: Expansion 2nd Challenge, 1915-23*, Charles Scribner's Sons, 1957, pp. 152-54, reproduced hearings, pp. 2756-2757."

Studebaker-Packard. <sup>2</sup>

"Ford, however, announced an average price increase of only 2.9 percent, ranging from \$1 to \$104 on its new models. A Ford representative described the price rises as 'no more than our actual cost for materials and labor have gone up.' <sup>3</sup>

"An immediate protest arose within the industry and industry spokesmen prophesied that the price increases for other members would be higher than Ford's average of 2.9 percent. At the time the Chevrolet general manager affirmed that General Motors' prices would be higher but said 'not a single person in GM knows how much, including Mr. Cur-tice.' <sup>4</sup>

"Two weeks later, on or about October 13, 1956, General Motors announced its prices on its new Chevrolet models. No announcements were made on any of General Motors' other models. The Chevrolet prices followed earlier predictions in reflecting an average increase of 6.1 percent over 1956 models, with actual prices ranging from \$50 to \$166 higher. Small increases were announced for hardtops in the anticipation 'that the volume of those models will be increased greatly during the coming year.' <sup>5</sup>

"The General Motors announcement was received with evident pleasure by the industry. According to one trade report, the news was welcomed--

"By other car makers who, nearing their own pricing deadline, had to account for heavy investment in manufacturing and tooling changes but at the same time were concerned lest they overprice their competitor.<sup>6</sup>"

"Ford waited 1 week and then revised its prices upward. In addition, it reduced its dealer discounts--the margin on which the dealer operates--from 25 percent to 24 percent, 'making it the same as Chevrolet's. <sup>7</sup>'"

"With the pricing picture now clarified, Chrysler felt free to announce its new prices. This was done the following week, on October 30, for all four of its makes. Somewhat belatedly, beginning on November 6, General Motors made a seriatim announcement of prices on Oldsmobile, Buick, Pontiac, and Cadillac cars."

\* \* \*

"The subcommittee was quite interested in this particular pricing phenomenon. Reference was first made to it in the hearings by Walter Reuther, president of the United Automobile Workers, who characterized it as the 'double shift in Ford prices.' He stated bluntly:

"Now Ford was supposed to have established their prices based upon their cost figures. But what happened? As soon as General Motors announced higher prices Ford revised their prices upward in line with GM. This is the first time in the history of a free enterprise economy where a company raised the price of their products in order to be competitive.

"They raised their prices to be competitive--why? Because prices in the automobile industry are set by General Motors.

<sup>2</sup> Business Week, September 29, 1956."

<sup>3</sup> Ibid."

<sup>4</sup> Ibid."

<sup>5</sup> Wall Street Journal, October 15, 1956."

<sup>6</sup> Ward's Automotive Reports, November 5, 1956."

<sup>7</sup> Ibid., October 22, 1956."

'Ford had to get their line out early so they had to have a price tag on it when they sent them to the dealers, and so as soon as General Motors made up their minds what the price would be that year, Ford very quickly got into line. Now, that is an administered price system...<sup>8</sup>'

\* \* \*

"Senator Kefauver remarked that, at the time of the original price announcements, a Ford spokesman had stated that the new prices covered 'actual costs for material and labor.' He added:

'Even though you were satisfied that you would make a good profit, you immediately raised yours. Why? Why not keep your competitive position?'

"Mr. Yntema replied that Ford officials were 'not satisfied, as a matter of fact.' He explained:

'I mean this is the kind of thing that happens in a competitive situation. It is like a boxing game where you try to guess what your opponent is going to do. You cannot tell, but this is part of the whole assorted picture.

'We made a very bad guess as to what our opponent would do. We knew we should price higher if we were going to maintain anything like the profit margin like we had and which was not enough to..'

"Senator Kefauver. If you had kept your prices lower, might not Chevrolet and other cars have come down to meet yours?

"Mr. Yntema. Conceivably it would have happened. I do not know if it would have happened.

"Senator Kefauver. If you had kept yours lower, would you not have gotten more sales, more business?

"Mr. Yntema. Probably some more. I do not know how much. This is a question of all of the factors in the situation and you take into account, and I have told you the story just as it happened.

"Senator Kefauver remarked that he still did not understand why Ford's prices were changed 'to become almost identical with theirs.' Mr. Yntema replied:

'In view of all the circumstances we thought that we had made the wrong decision earlier, and there were some of us who thought so originally. I must say that the views of some of us were quite different from the actions taken and that later prevailed.'

"Thus, it would appear that, just as personalities and relative industrial positions change in the course of the life of a corporation, so, also, the least conforming may in time become the most receptive to the established mores of the trade..."

\* \* \*

"And just as Mr. Humphrey, of National Steel, paid high tribute to U.S. Steel as the price leader, in the subcommittee's earlier hearings, <sup>18</sup>. So did Mr. Yntema in speaking of General Motors:

<sup>8</sup> Hearings, p.2214, Mr. Reuther presented a table showing Fords' 2nd Chevrolet's 1956 prices, Ford's first price on its 1957 models, the Chevrolet prices, and Ford's final prices. This table, p.2405 of hearings, provides data additional to that shown in the text of this report."

<sup>18</sup> Hearings on Administered Prices, Steel, pt.3, July 1957, p.870".

"By virtue of consistently excellent performance over a long period of years General Motors has won a high rating of its net asset value. Its management has been able to achieve unusual efficiencies in scale of operations, in dealer organizations, in product improvements, in production methods, and in other phases of its operations. As we know only too well, General Motors does not get its profits by excessive prices, but by low costs.<sup>19</sup>"

\* \* \*

Having found that General Motors did not have to consider competition of the marketplace in setting its prices, the Senate Antitrust and Monopoly Subcommittee identified the real bases of GM's administered price formula--a target profit rate of 20% net on investment, and a standard volume concept. These basic factors are explained in these excerpts from the subcommittee reports:

"COSTS, DEMAND AND PRICE POLICY"

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"General Motors' 'Target' Profit Rate"

"The method employed by General Motors for setting its automobile prices is basically that of a public utility. Unit costs are projected on the basis of forecast volume by an elaborate statistical procedure; these become the instrument for the fixing of prices. But a distinction should be noted. The public utility is a regulated monopoly; its cost formulations and pricing practices are subject to governmental supervision for the protection of the public. General Motors possesses much of the economic power of a public utility, but it is free from governmental oversight. The utility is limited in its pricing policy to the recovery of its costs and a fair return on its capital. General Motors is free to secure the maximum attainable return.

"An acceptable theory of pricing must be to gain over a protracted period of time a margin of profit which represents the highest attainable return commensurate with capital turnover and the enjoyment of wholesome expansion, with adequate regard to the economic consequence of fluctuating volume. Thus the profit margin, translated into its salient characteristic rate of return on capital employed, is the logical yardstick by which to gage the price of a commodity with regard to collateral circumstances affecting supply and demand.<sup>1</sup>"

"The statement above was made in 1924 by Mr. Donaldson Brown, General Motors' vice president in charge of finance. It is the basic concept which underlies the entire system of price formulation developed by Mr. Brown and Mr. Albert Bradley in the early 1920's. More than three decades of highly successful operation in terms of this concept have served to convince General Motors management of its validity. As Mr. Bradley informed the subcommittee in 1955, 'The principles we established at that time still govern.'<sup>2</sup>

"The rate of return, after allowing for income taxes, which General Motors seeks over the years through its pricing formula has been variously stated by company officials to be '15 percent' or '20 percent'. The discrepancies that exist in published statements on this point appear to reflect only differences in the bases upon which the return is calculated. The base most generally used by General Motors is 'capital employed in the business.' Mr. Bradley assured the subcommittee in 1955 that 'capital employed' is synonymous with net worth.<sup>3</sup> In 1958, on the other hand, Mr. Curtice implied that there is a difference"

<sup>19</sup> Hearings, p. 2745

<sup>1</sup> Donaldson Brown, Pricing Policy in Relation to Financial Control, Management & Administration, vol. 7, No. 2, February 1924, p. 197."

<sup>2</sup> Hearings 1955, pt. 7, p. 3583."

<sup>3</sup> Ibid., p. 3586."



"Senator Kefauver. Do you mind telling us anything about (your objective)?

"Mr. Curtice. That would be in the area of 15 percent.

"Senator Kefauver. 15 percent on what?

"Mr. Curtice. After taxes, return on the capital.

"Senator Kefauver. 15 percent after taxes on your net worth?

"Mr. Curtice. On the capital employed in the business.<sup>4</sup>

"In the early Donaldson Brown articles, referred to above, 'capital employed' is a much broader concept than net worth, embracing items which include most of the company's assets. The rate of return on manufacturing investment, which Mr. Brown used to derive the profit component of price, was based upon gross working capital (cash, receivables and inventories) and net fixed assets (real estate, plant, and equipment).<sup>5</sup> The total of these items (including short-term Government securities with cash) reported by General Motors at the end of 1957 amounted to \$6.1 billion, compared to a net worth of \$4.9 billion. If the investments in unconsolidated subsidiaries and miscellaneous investments, the income from which is included in the company's consolidated reports, are added to the previous figure, an asset base of \$6.6 billion in 1957 appears.

"It is clear that a level of profit sufficient to yield an annual return of 15 percent on an asset base such as that shown above will provide a return closely approximating 20 percent on net worth. This suggests that General Motors arrives at its prices by adding to total costs a margin sufficient to cover estimated income taxes and leave a 15 percent net return on capital employed, in the expectation that this will yield in the neighborhood of 20 percent a year, on the average, on net worth.

"Regardless of the base upon which the rate of return is computed, General Motors' net income can hardly be considered a residual from sales which remains after costs and taxes have been met, as would be the base in a competitive market. A margin designed to provide a predetermined net return on capital is embodied in the prices at which the company sells its products. Mr. Bradley was questioned about this in 1955:

"Mr. Burns. Does not the rate of return on investment enter into the deliberations on pricing with respect to all of the products of the corporation?  
Mr. Bradley. That is true; all of the principal products; yes.<sup>6</sup>

"In short, realized profit is a residual only to the extent that actual costs and sales differ from the forecast levels used to establish prices."

#### "The Standard Volume Concept"

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"The standard volume suggested by Donaldson Brown some 35 years ago, and that used today by General Motors, is 80 percent of rated plant capacity. Mr. Bradley provided an explicit formulation of the concept in the 1955 hearings:

"We endeavor in planning for capacity to--we take the number of days there are in the year, and then take out the Sundays and holidays, and then we take out the minimum number of days...to turn around--I mean to bring out new models.

"From that, we find there are 225, taking out all the Sundays, holidays, and Saturdays, and 15 full days, or 30 half days, for turning around, giving 225 days which we would like to run the plants year in and year out.

<sup>4</sup> Hearings, p.2524."

<sup>5</sup> The subcommittee files contain copy of address by R.C. Mark, Comptroller, General Motors, entitled 'Internal Financial Reporting of GM.' No date is given; the examples used indicate the talk was presented in late 1952. As one example, Mr. Mark showed the rate of return reported of a hypothetical manufacturing division (chart No.7). The investment base upon which the profit rate was computed was that described by Brown in 1924--gross working capital and net fixed assets."

<sup>6</sup> Hearings, 1955, pt. 7, p.3607"

"But we don't use 225, we use 80 percent of that as a standard volume, because ours is a business that you might call cyclical...So, to allow for that cyclical factor and other conditions beyond our control, we take 80 percent of that 225 days...So that gives us 180 days. And that, multiplied by our daily capacity, gives us a standard volume, which we work up by divisions, and which we hope to average. 8" "

\* \* \*

"The subcommittee was interested in the precise manner by which General Motors arrives at its prices. Mr. Curtice explained that 'They are established by a very small group of us within the General Motors Corp.'--a price policy committee composed of himself, Mr. Frederic G. Donner, Executive Vice President and chairman of the financial policy committee, Mr. L. C. Goad, executive vice president in charge of automotive and parts divisions, and Mr. George Russell, vice president in charge of the financial staff.<sup>9</sup>"

\* \* \*

"...As Mr. Curtice explained to the subcommittee:

"How do we make use of the standard volume concept. First, labor and material costs that are directly applicable to each unit produced are calculated on the basis of current wage rates and material prices. Indirect or overhead costs are then determined on a cost per unit basis by distributing them over the determined standard volume. Fixed unit costs so measured are not affected by short-term fluctuations in volume...This method of estimating unit costs on the basis of standard volume gives us a benchmark against which to evaluate our cost-price relationships.<sup>10</sup>"

"Having arrived at standard costs for an automobile in this manner, it is only necessary to add a margin over factory cost which will return the desired level of profit at standard volume in order to get what may be called a standard price for the automobile. This provides Mr. Curtice's benchmark to which the actual price and cost may be compared.

"The general manager of each automotive division prepares a tentative schedule of prices for each car or truck in his line. This is done in the light of his knowledge of his divisional costs, productivity, projected volume and the return which the corporation expects on the capital for which he is responsible.<sup>11</sup> The suggested prices may vary from the standard prices on each model because of market conditions, the desirability of pricing certain models to compete with comparable models of other producers, and so forth, but the manager must always bear in mind his ultimate responsibility for divisional profits. As Mr. Curtice said in 1955, 'He is there to earn a fair return on the investment that represents his franchise. <sup>12</sup>'"

\* \* \*

"The American Institute of Management had this to say about General Motors' operating profit (net sales less cost of sales, selling and administrative expense and depreciation):

<sup>8</sup> Hearings, 1955, pt.7, p.3584."

<sup>9</sup> Hearings, pp. 2515-2516"

<sup>10</sup> Hearings, pp. 2519-2520"

<sup>11</sup> See Hearings, 1955, pt.7, pp. 3605-3609"

<sup>12</sup> Hearings, 1955, pt. 7, 3608"

'The astonishing fact emerges...that, from 1949 through 1955, the average rate of operating profit in proportion to total assets employed, including debt, has exceeded 40 percent per annum. The operating profit on net stock and surplus, defined to include minority interest and special reserves, has exceeded 55 percent per annum in the average of these years. It has averaged 140 percent of the average net plant account in these same years! This is optimum utilization of capital and equipment in the fullest sense of the phrase. '16'

"The institute pointed out that at the 1955 rate of profit, General Motors' net earnings (after interest and income taxes) were sufficient to recoup the company's entire net plant investment in 2 years. This was not simply the result of an exceptionally high rate of activity in 1955: 'It is, in fact, a continuing characteristic of the enterprise, being equaled or bettered in 12 of the preceding 20 years.'<sup>17</sup> With respect to General Motors' performance over the years, the American Institute of Management could only marvel that 'the rate of return is phenomenal.'"

"16 American Institute of Management, The Corporate Director, July 1956, p.5."

"17 Ibid., p. 3."

Subsidy -- The Missing Piece of the Puzzle

Certain key facts gleaned from the Senate report should be kept in focus while we examine some additional facts not disclosed in the report -- facts which can give highly significant answers to the one important unanswered question posed by the subcommittee:

Since neither optimum plant size nor innovation nor low pricing accounts for GM's power and strength, what does account for it?

The facts from the Senate report to keep in mind are:

- (1) GM has the monopolistic power to set administered prices for the auto industry. Its prices are based on 20% net profit return on net worth after taxes (41.67% before taxes), and recovery of costs at 80% of rated capacity (only 180 days of production).
- (2) GM has a strong, and by far the largest, dealer organization.
- (3) GM has a power of subsidy latent in the obscurely reported operations of its divisions. As the report observed:

"General Motors can look with equanimity upon divisional losses for a year or two; the small independent, with limited financial resources, is face to face with bankruptcy... It is the exceptional small entrepreneur who need concern himself only with his return in terms of an aggregate for a 12-year period."

As will be seen, this competitive situation encompasses not only manufacturing divisions but also non-manufacturing subsidiaries, such as GM's finance company. And, as also will be seen, there are effective ways for one GM-owned operation to render financial subsidy to another GM-owned operation, other than taking a visible dollar loss.

In the subcommittee's search for the source of GM's unusual strength and power, it was unable to find any substantial answers in the areas investigated, such as excess size over competitors, efficiency of plant complex and innovations; but the report indicated interesting soundings in the area of GM's "conglomerate operations." Of the facts kept beyond its reach, the subcommittee report commented:

"The GM statements also contained other information which is far from clear, but suggests evasive and rather tantalizing implications. The notion of confidentiality is carried so far that it is not made clear whether the references are to automotive or non-automotive divisions."

While GM has been able to keep its individual divisional operations secret, it must (fortunately, for a deeper understanding) disclose important information on the operations of its corporate subsidiaries. Information about certain subsidiaries discloses much that was impossible to pin down in the obscured divisional interrelations. Such information gives significant new dimensions to the subcommittee's observations:

"To a far greater extent than its competitors, General Motors is engaged in industries other than those involved in the production of its principal products."

Examination of GM's interrelations with its finance subsidiary, General Motors Acceptance Corporation, and with its auto insurance subsidiaries, General Exchange Insurance Corporation and Motors Insurance Corporation, will dispel much of the mystery about GM's unparalleled growth, dominant power and financial success.

The Senate investigators' report demonstrated that GM through its monopolistic powers can set prices to recover its manufacturing and related costs and earn 20% net profit on common net worth, after recovering the 21.67% to net worth needed to pay the 52% federal income tax. From the administered prices charged, the manufacturing divisions of GM have been furnishing such profits for GM's net worth consistently for many years.

GMAC's Capital Subsidy from GM

But--what has not been recognized generally outside the company's management--the factory divisions, on top of their own lush profit showings, have been carrying the profit-and-tax load for at least one-half the proper net worth of the corporate subsidiary, GMAC.

Here is a vital key to the mystery of General Motors' dominance over auto manufacturing, marketing and financing--an exclusive, huge, subtle and potent subsidy, capital subsidy. Subsidy is an apt and accurate name for the multi-million-dollar profit-and-tax load which customers of GM factory divisions bear for GMAC so as to permit subsidized financing rates to dealers.

GMAC's capital subsidy is no loss to GM factory divisions; they hew to their target of 27% net return (or more) on each capital dollar and pass on the subsidy bill to buyers of GM automobiles. Though the amount is easily hidden in each sale, the subsidy when multiplied by millions of sales is transformed into a mighty weapon that increases GM's dominance over other manufacturers, other dealers, other financing agencies, none of whom are so armed.

GMAC Privilege from Institutional Lenders

The basis of GMAC's capital subsidy is exclusive privilege which allows it to be substantially undercapitalized, simply because it is owned by General Motors. Such privilege is formalized in an indenture agreement between GMAC and a number of life insurance companies and other institutional lenders, an agreement that specifically requires more capital for GMAC should GM ownership end. A complete text of the indenture agreement appears as an appendix to this monograph; but a statement which General Motors filed with the Senate Antitrust and Monopoly Subcommittee in 1959 summarizes the provisions:

"In accordance with the provisions of its indentures, GMAC may borrow presently up to 100 percent of the amount of its capital stock and surplus in senior subordinated indebtedness as well as 100 percent in junior subordinated indebtedness; i.e. the equivalent of 200 percent of its capital stock and surplus...studies reveal that larger finance companies are limited to a ratio of 125 percent or even 100 percent." (Notes: Lesser-sized companies have lower limits.)

"...as long as GMAC is owned by General Motors, it can borrow up to 200 percent of its equity capital through issuing subordinated notes but only 133 percent in the absence of GM ownership..."

Thus, GMAC has the exclusive privilege--which it exploits--of holding a capital investment of one-half, or less, of the common capital required for a conventional sales finance company. And it can be assumed that GM holds ample capital to offset GMAC's stock deficiency. While institutional lenders obviously regard the GM-GMAC complex as a single financial unit, it follows that they expect a total capital underpinning which--however it may be divided between GM and GMAC stock certificates--more nearly approaches the accepted standards of capital-debt ratios than does GMAC capital by itself.

The fact that GM has more than ample financial resources to capitalize GMAC conventionally by merely shuffling its fund is manifest. In 1959, GM could have doubled GMAC common capital and still had more than \$1 billion left in cash and government bonds, for a comfortable 3-to-1 current-assets-to-current-liabilities ratio. This same capacity to capitalize GMAC conventionally has existed over the many years covered by GMAC's strikingly low common net worth.

The extent to which the indenture agreement and other exclusive concessions by lenders have permitted GMAC to borrow funds not on its own capital, but on the strength and excess capital of GM, is illustrated by the negligible amount of GMAC common net worth to total assets in 1955 when it reached a low of 4.35% of total assets, or a borrowing ratio of almost 21 to 1 of common. Its assets at risk amounted to 96.6% of its total assets, which provides a risk-asset ratio of 20 to 1. By contrast, national banks, when their risk assets reach 6-to-7 to 1 of net worth, are asked by the Comptroller of the Currency to increase net worth.

Details of conventional sales finance company capitalization, as against GMAC's, are set forth elsewhere.

Capital Costs: Most Expensive Ingredient

The potency of the GMAC capital subsidy can be better understood when capital cost is recognized as the most expensive ingredient of the total-costs mixture that makes up the financing rate.

Any corporation's capital dollars are normally more expensive than borrowed dollars, because owners take the greater risk, standing at the end of the priority-of-payment line. Moreover, return from the capital dollar is subject to tax (which is passed on to customers as part of the price); whereas in contrast, the interest that a borrowing company pays on debt is a tax-deductible expense.

The cost of capital dollar is more than doubled since the 52% federal income tax has been in effect. Every dollar of GM net income calls for more than one dollar to be collected for income tax.

The advantage to GMAC of the exemption from using and charging for only half of the capital dollars needed for its business becomes clearer upon separating and examining the various ingredients of the total-costs mix.

The total costs paid by the customers of a sales finance company consist of the following:

1. Cost of funds
  - a. Cost of capital
    - (1) Profits
    - (2) Income tax on profits
  - b. Cost of borrowed funds
2. Cost of operating (including credit losses)

The relative importance of these basic costs can be seen in analyzing them as they apply to GMAC standards.

To cover capital cost with corporation income tax at 52% and a GM profit requirement of 20%, GMAC must collect from customers \$1.08 for the Government to each \$1.00 of profit for the corporation, or \$41.67 per \$100 of common capital.\* These two parallel computations show how the capital cost figure is determined:

Profits of 20.00% (48% of gross profits before taxes)  
 Tax of 21.67% (52% of gross profits before taxes)  
 Cost of capital 41.67% (100% of gross profits before taxes)

The cost of borrowings for GMAC for 1955, arrived at by dividing the total interest cost by average outstanding notes and debentures, amounted to \$3.22 per \$100 of interest-drawing debt.

Operating cost, including credit losses, for GMAC in the same year, computed by dividing total operating expenses (including losses) by the average outstanding receivables, amounted to \$1.96 per \$100 of such receivables.

Summing up, the ingredients of the total-costs mix for GMAC customers, according to estab-

\*GMAC's pattern indicates that GM's measuring stick for return on investment in GMAC is 20% of common-stock net worth; average of actual yearly percentages, for 1950-59 was 19.2%. Return on GMAC common stock is used throughout this discussion. Net worth (common and surplus) figures are averaged for each year.

lished standards, take shape as follows:

- |  |   |
|--|---|
| 1. Cost of funds   | (Actual cost of funds varies according to varying ratios of expensive capital and less-costly borrowings in the total-funds "mix.") |
| a. Cost of capital: \$41.67/\$100 of capital                   |   |
| (1) Profits: \$20.00/\$100, at "target"                        |   |
| (2) Tax: \$21.67/\$100, at 20% profit                          |   |
| b. Cost of borrowings: \$3.22/\$100 of borrowings              |   |
| 2. Cost of operating: \$2.96/\$100 of outstanding receivables. |   |

It can readily be seen that the GM and GMAC capital dollar is much more expensive than the borrowed dollar -- 13 times more costly in this example.

Operating cost for GMAC is about equal to interest cost in per-unit weight, as a factor in the total cost to customers.

Thus, the capital dollar stands as clearly the highest-priced-per-unit ingredient that must be recovered in the finance charge to customers. And it follows that reducing the capital cost, by whatever kind of subsidy, is the most effective avenue to a competitive advantage through reducing finance charges.

#### How Capital Subsidy Works

General Motors could subsidize GMAC's capital cost by requiring a lesser return than the standard GM capital yield of 20% net after taxes. This it does, to some extent, by holding an investment of \$50 million of preferred stock in GMAC (about one-sixth of total GMAC stock value in 1959), which brings a return of 4% rather than GM's common stock target of 20%.

Of greater import, GM could, at any time it sees fit, reduce its return from GMAC by any degree down to no profit at all, or even a loss, with ruinous impact on competitive manufacturers, dealers and financing agencies. In practice, however, GM has been able to avoid any compromise with its 20% target return and still has kept a unique upper hand competitively.

The more subtle form of capital subsidy -- withholding capital in GM that should be in GMAC -- has served General Motors' ends full well. The privilege of holding only one-half the normal amount of stock means that GMAC needs collect only one-half the total capital-cost dollars (profits-plus-tax) that it would otherwise.

Since income tax is about one-half of capital cost, the withheld capital subsidy gives GMAC a competitive advantage equal to enjoying taxfree profits.

The workings and impacts of the withheld-capital subsidy are unfolded on further examination of GM and GMAC operations.

If, in 1955, GM had doubled the capital of GMAC, thus bringing its finance subsidiary somewhat in line with the conventional requirement of creditors for sales finance companies, it would have reduced its own capital in the parent company by \$174 million. Instead, the factory divisions held this \$174 million in their net worth, on which the automotive (and other) product prices were fixed so as to return a 20% profit, and 21.67% for income tax (or a total of 41.67%) after all other costs -- at 80% of plant productive capacity. But 1955 was a bumper sales year and on administered prices calculated at 80% capacity, GM earned a 33.5% net profit after taxes (or 70% before taxes) -- well over the GM "target" return.

The 70% before-tax return calculated against the \$174 million excess withheld in GM, amounted to a profit before tax of \$122 million in 1955, which was collected by the factory divisions of GM. Spreading this \$122 million over all GM factory civilian sales of \$11.5 billion

on, equals about 1%.

This 1%, converted into the effect on the price of a \$3,000 car, amounts to \$30 -- an amount that can be easily obscured in the high administered price.

Studies show that for lower volume years and for a normal GM rate of return, the 1% relationship holds. For example, a 20% "target" return on \$254 million of withheld capital in 1959 (offsetting GMAC's capital deficiency for that year) with the charge for tax was \$106 million -- about 1% of GM factory civilian sales of \$10.8 billion.

Thus, GM has hidden in the price of all GM products a capital subsidy for the benefit of GMAC.

Having considered the "toll" for GM factory divisions, let us examine the benefits to GMAC -- and the ultimate benefits to GM. In 1955, the withheld-capital subsidy saved GMAC from collecting the 20% profit and 21.67% tax (or 41.67% total) for \$174 million of withheld capital, or \$72.4 million of capital-cost dollars which it would have had to produce if conventionally capitalized. This sum amounted to 2% of GMAC's average outstandings in 1955 -- a potent differential to wield against its independent competitors, as well as dealers and makers of competitive autos.

#### GMAC, and GM's Marketing Strategy

GM dominates the pricing of motor cars and in effect prescribes administered prices for like models for its automobile competitors. It can, therefore, carry the cost of this subsidy in the oligopolistic auto market, which it controls, and enable GMAC to use this subsidy to great advantage in merchandising GM new cars -- not necessarily by passing along the subsidy in a price reduction to time buyers, but by making use of it in its marketing strategy.

General Motors' marketing strategy combines the withheld-capital subsidy -- and other forms of subsidy -- and converts much of the "pooled" funds into a variety of GM-GMAC subsidies to dealers, representing different pockets of income, all controlled exclusively by General Motors and its finance and insurance subsidiaries. (See chart page 74)

Here are some ways and forms in which the subsidies are dispensed: -- At the retail sale level of competition to influence (1) the trade-in value of a used car or price of purchased car, if competition so dictates; or to influence (2) the finance costs or (3) later insurance settlements, if competition centers there.

--At the dealer relations level, in the competition between GM and other manufacturers for dealers, through (1) subsidized wholesale rates on floor-planned new cars; (2) delayed income to dealers from profitable loss reserves and excess finance charges, both held on the books of GMAC; (3) delayed income to dealers for repair and replacement of parts under the insurance coverages, again controlled by a GM subsidiary; and (4) insurance commissions, wherever legal.

Independents, in order to serve manufacturers competing with GM strategy and tactics, have had to counter by offering as many and as much of these advantages as possible. But the picture presents these critical differences: (1) No independent has control of any dealer franchises; the independent must serve and cannot dictate. (2) No independent is factory-subsidized. (3) No manufacturer other than GM (and partly Ford) has any of the tools other than franchise.

#### GM Subsidies Serve GM

It should be noted that the GM-GMAC subsidies through the dealer serve primarily the interests of General Motors, rather than the interests of the dealers.

The subsidies are tools to sell for the factory at a guaranteed profit a factory-determined volume of autos; dealers have the role of disposing of their allotted share of the volume.



by whatever manipulation of pockets of income that may be necessary, with their own net profit not at all guaranteed and appreciably less than the factory's. With its financial resources and subsidies, however, GM can make its dealers' position appreciably more rewarding and less hazardous than that of competitive dealers, and thus attract and hold not only the greatest number of dealers, but also a concentration of the most effective.

Further insight into GM's unique advantages can be obtained through further analysis of the GM-GMAC subsidy structure. Before discussing other forms of subsidy, however, it seems pertinent to observe that the withheld-capital subsidy described above does not provide a true economic saving to customers as a group. Buyers of autos, as has been seen, pay the amount, or even more, by which GMAC financing rates are lowered by GMAC's under-capitalization. And GMAC's direct customers, the dealers, and ultimate customers, the time buyers, do not benefit proportionately, if at all.

The withheld-capital subsidy reduces by 2% the total income which GMAC must produce. But GMAC's net discount rate to dealers, according to Ford's spokesman (a witness friendly to GM's position) at the 1959 Senate hearings, is only 50 cents per \$100 less than leading independent sales finance companies charge -- a differential that amounts to 1% in terms comparable to the 2% differential in total GMAC financing charges. This means that GMAC retains half of the fruits of the subsidy; the half that it puts in the dealer's hands so soon turns out to be a net gain for the dealer -- it is merely one variable of several variables that enter into the retail give-and-take. On balance, the customer pays a total price that guarantees the factory a fixed-profit sale, and the dealer may have a net profit that exceeds what a competitor would have made but is modest as compared with the factory's profit.

#### Other Subsidies to GMAC

It has been shown how General Motors enjoys monopolistic benefits from subsidizing the most expensive ingredient of sales financing charges (or total costs), the capital dollar. The most numerous of the dollars, however, for which a finance company must recover costs are the borrowed dollars, with their cost of interest. In this vital area, GM has not neglected to provide certain exclusive subsidies or quasi-subsidies for GMAC through its monopoly and combined financial resources.

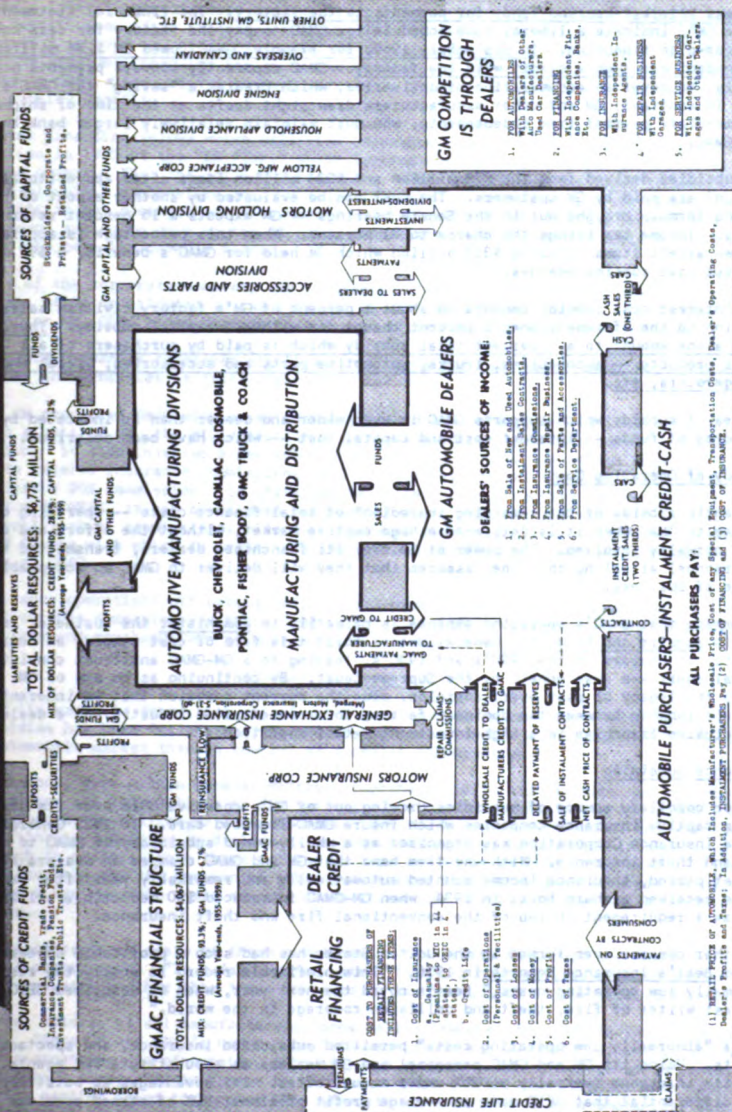
#### Subsidy of Interest Cost

Here are examples of how GM financial resources serve to subsidize, actually or in effect, GMAC's interest costs:

1. Lower nominal interest rates than independents can obtain. It can be inferred that ~~with~~ it not an integral part of the GM financial complex, GMAC could not enjoy such a differential. For example, General Motors borrows in its name from banks and then allots certain of the bank credit to GMAC, according to GM's own statement to the Senate in 1959. ~~Without~~ <sup>With</sup> such sponsorship, independent sales finance companies must pay consistently higher interest costs on total borrowings. Only the largest independents can hope to escape this handicap, and they only intermittently.
2. Lower effective interest rate on bank borrowings, due to GMAC's privilege of keeping an unconventionally low ratio of idle, expensive cash balances. Banks require conventional finance companies to keep compensating balances of 15% to 20% of their lines of credit. The finance companies cannot use this money, but must pay interest on it, which raises the effective interest on money that can be used. That banks regard GM's bank balances and other resources as a partial substitute for GMAC's compensating balances is evident in comparative ratios of cash to total assets. GMAC maintains 3% to 4% cash, whereas independents vary from 5% to 12%. (Table II-17.) GMAC would have had to increase its bank balances by \$75 million in 1959 to equal the percentage the largest independent needed.
3. Greater ratio of low-interest commercial paper. The amount of commercial paper available to a finance company is directly linked to its bank lines, and part of the cost is the compensating balances. GM's bank lines and balances, plus other resources, must be the basis for the gap between GMAC and independents, as detailed elsewhere (See Table II-19).

# GENERAL MOTORS FINANCIAL STRUCTURE

SHOWING RELATIONSHIP OF FLOW BETWEEN DIVISIONS



4. Less interest-bearing funds for payments to the factory. The financial statements of GM and GMAC indicate a liberal time schedule for GMAC to pay the factory for cars covered by floor-plan financing. In September, 1960, for example, GMAC, owed GM \$234 million; no independent has such a credit with any factory. GMAC apparently conveys payments periodically, to cover an accumulation of deliveries, which creates a "saving" for GMAC's benefit. In contrast, GM and other manufacturers draw sight drafts at the time of shipment for immediate payment from independents, who must maintain relatively larger bank balances than GMAC.

The subsidies derived from the \$78 million and \$234 million items cited above (total \$312 million) are paid by GM customers. The cost can be evaluated by another aspect of the GM pricing formula brought out in the Senate hearings -- GM expects a 15 percent return on assets. Income tax brings the charge to 31 percent. When this percentage is applied to the two assets items totaling \$312 million which GM held for GMAC's benefit, a \$97 million interest cost subsidy emerges.

This interest cost subsidy amounts to about 1 percent of GM's factory civilian sales -- in addition to the aforementioned 1 percent charge for withheld capital subsidy. Thus, these items alone amount to a 2 percent total subsidy which is paid by purchasers of all General Motors products -- automobiles, trucks, automotive parts and accessories, Diesel engines, refrigerators, etc.

The sea of subsidy which supports GMAC is even wider and deeper than is indicated by the subsidies of funds -- interest cost and capital cost -- which have been described.

#### Subsidy of Operating Cost

A gigantic subsidy of the remaining ingredient of total finance costs -- operating cost -- accrues to GMAC when it is delivered a huge captive market, without the effort and expense normally involved. The power of GM over its franchised dealers, transmitted through GM personnel all along the line, assures that they will deliver to GMAC an acceptably large volume of business.

This means that GMAC's operating expense is primarily to administer the business, rather than to acquire and hold it. General Motors built this form of cost subsidy on outright coercion of dealers in the 1920's and 1930's, leading to a GM-GMAC antitrust conviction in federal court -- a case upheld by the Supreme Court. By continuing as an arm of GM, GMAC enjoys the legacy of past overt coercion, plus the current coercion that is inherent in the relationship between the dominant factory in a concentrated industry and a dealer with an exclusive franchise in a high-investment retail operation.

#### Insurance Subsidies

A major corollary source of subsidies growing out of GM's coercive hold over its dealers is its captive insurance companies which insure GMAC-financed cars. In 1925 General Exchange Insurance Corporation was organized as a wholly-owned subsidiary of GMAC to write fire and theft insurance. With the firm hand that GM and GMAC clamped on dealers beginning in that period, insurance income mounted automatically and remarkably year after year. The income received a sharp boost in 1934, when GM-GMAC introduced \$50 deductible collision coverage as a requirement on top of the conventional fire and theft insurance.

"No other company ever formed in the United States has had such a profitable career," observed Best's Insurance Reports in 1936. "This profitable record is wholly the result of abnormally low operating costs," Best's noted the next year, when it described GEIC as the "largest writer of fire, theft and collision coverage in the world."

GEIC's "abnormally low operating costs" permitted subsidized insurance, and spectacular profits. Using its GM and GMAC personnel and GM dealers as a substitute for agents, GEIC sold its insurance typically at 25% under manual rates. Its advantages so outstripped the rate differential that GEIC made an average profit of almost 30% of earned premiums in the nine years ended with 1935, at which time GMAC transferred title of GEIC to GM.

The world's largest auto casualty underwriter still continued to give GMAC a substantial subsidy benefit even after transfer of GEIC. The \$50-deductible collision coverage, which GM required from 1934 on, produced an additional volume of finance receivables for GMAC, because the premiums increased the amount of total credit in each contract. This added income came to GMAC, like all its income, largely as a result of coercion of dealers, an exclusive subsidy benefit.

The greater financing volume which collision insurance brought to GMAC was linked to GMAC's introduction in 1935 of the "6 1/2 Plan," which lowered the finance rate and purported to benefit time buyers. That the collision insurance volume subsidized the lower finance rate is a more plausible explanation than GM's justification to the Federal Trade Commission -- "lower costs in our business and economies in operation." By the time GM finally was forced by Government action to give up the 6 1/2 Plan, competitive manufacturers, dealers and finance companies had been irreparably harmed.

Typically of the corporate complex, the insurance writing profit to GM, though no longer on GMAC books, still contributed to the strength of GMAC as a family member. Also, whether under GMAC or GM, GEIC aided dealers as a source of repair and replacement revenue.

Other finance companies countered with insurance plans and rate reductions, but independents had none of the subsidies of factory control.

In 1939, GM presented GMAC with a new casualty insurance company, Motors Insurance Corporation. As a unit of GM, the MIC operation also has subsidized operating costs in business acquisition. It also injected a new subsidy for dealers to use. In states that permit dealers to receive insurance commissions, MIC charges full-manual rates to car buyers and pays dealers a 20% commission. In states where dealers cannot receive commissions and therefore deal with GEIC, it can be assumed that GMAC finance reserves are adjusted to make up for dealers' lack of commissions. The MIC insurance commission gives the dealer another pocket of income with which to trade. In 1960, GEIC and MIC were combined as a subsidiary operation of GMAC.

GM's insurance operations pit subsidized, captive-market competition against not only independent insurance companies and their agents, but also independent garages and independent manufacturers and merchandisers of auto parts and accessories.

#### Subsidy vs. Survival

In all of its manifold forms, not all of which have been described here, the complex of GM-GMAC subsidies has been instrumental in developing and extending a monopolistic domination of the automobile market through control of a dealer organization.

Probably no one, even within General Motors, comprehends fully all the workings of subsidy that arise from the interactions of the various divisions and subsidiaries and parent, and their combined multi-billion-dollar resources. But the everyday workings of the various pockets-of-income subsidies to dealers -- current, delayed and prospective incomes -- are clear enough to dealers, both those selling GM cars and those selling other makes. This awareness accounts for the erosion of effective dealers from other manufacturers to GM, almost always a one-way trip. And no auto manufacturer can thrive, or survive, without strong dealerships.

Other manufacturers are aware of these overtones of the Senate Antitrust and Monopoly Subcommittee's observations: "To a far greater extent than its competitors, General Motors is engaged in industries other than those involved in the production of its principal products."

Only General Motors, of all manufacturers, owns well-entrenched finance and insurance subsidiaries. Since GM and GMAC's now-monopolistic dominance was launched in, and is sustained by, an ever-expanding sea of subsidy, with many and various currents and cross-currents, competitors have always had to cope with some kind of subsidies of their own. Ford and Chrysler earlier tried to counter GM's strength with captive finance companies; the record shows that certain manufacturers actually paid millions of dollars in subsidies to

avored finance companies so as to compete with GMAC rates and other features. Ford, at the 1959 Senate hearings, indicated that it was reconciled to years of loss (or subsidy) for its fledgling finance company.

Ford, in setting up a new finance subsidiary and new insurance subsidiary, has undertaken to follow the GM pattern. But even for a company of Ford's size it will be difficult to close the gap which GMAC's entrenched privilege has gained for GM. And the burden of venturing into finance and insurance would seem to make survival impossible for some of the other manufacturers in an industry already reduced to five producers.

If sales financing of automobiles becomes strictly the adjunct of factories, independent finance companies and banks will be forced from this field, and factory sales policies and quotas will take unchallenged supremacy over soundness of credit as the basic control.

If a captive finance company becomes a requisite for auto manufacturing, there will inevitably become fewer manufacturers, and an increasingly narrower choice for the consumer not only as to finance and insurance services, but also as to the kind and price of automobile.



(The information referred to at pp. 48 and 54 follows:)

AMERICAN FINANCE CONFERENCE, INC.,  
Chicago, Ill., August 1, 1961.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives,  
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing the letter that I mentioned on page 126 of the transcript.

I am also enclosing the rates that Mr. McCulloch asked for on pages 141 and 142.

Sincerely,

PAUL JONES,  
Chairman, Executive Committee.

Following is a statement from a letter dated January 8, 1958, from Victor R. Hansen, then Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, to Mr. David Cassat:

"Dear Mr. Cassat: This is in reply to your letter of December 20, 1957, with reference to our conference of October 9, 1957, relating to the consent decree involving the General Motors Acceptance Corp.

"We have given a considerable amount of attention in the Antitrust Division to the question of reopening this decree to provide more adequate relief to independent automobile finance companies. We have also given a great deal of consideration to a new proceeding in the automobile finance business. We have concluded, however, on the basis of all of the information which we presently have, that neither of these alternatives appears to be practicable at the present time. While this situation may change pending additional developments in the automobile finance business, this is the best answer I can give you at the moment."

---

GLENVIEW STATE BANK

Glenview, Ill.

MAY 1, 1961.

NEW CAR RATES

Recourse—\$4.85 per hundred per annum.

Without recourse—\$5.15 per hundred per annum.

The above rates apply to new cars passing credit requirements. Any charge made to the purchaser above this will be credited to the account of the automobile dealer.

Preferred risk diversified area—4 percent with or without recourse.

---

AMERICAN SECURITY DIVISION OF A.S.C. CORP.

Marion, Ind.

JANUARY 1, 1961.

NEW CAR RATES

Recourse—\$4.85 per hundred per annum.

Without recourse—\$5.15 per hundred per annum.

The above rates apply to new cars passing credit requirements. Any charge made to the purchaser above this will be credited to the account of the automobile dealer.

Preferred risk diversified area—4 percent with or without recourse.

(The information referred to at p. 57 follows:)

AMERICAN FINANCE CONFERENCE, INC.,  
Chicago, Ill., August 2, 1961.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At pages 150-151, where I am testifying, I mentioned about Judge Hansen's letter, but Representative McCulloch at one time during

the questioning, referred to the letter as being written by Herbert Brownell, who was the Attorney General, so that the record might be a little confused. Brownell did not write a letter, but Hansen wrote the enclosed one and that was the one that I agreed to furnish.

Sincerely,

GEORGE W. OMACHT,  
*Vice President, Associates Investment Co.*

U.S. DEPARTMENT OF JUSTICE,  
*Washington, D.C., January 8, 1958.*

Mr. DAVID B. CASSAT,  
*President, Interstate Finance Corp.,  
Dubuque, Iowa.*

DEAR MR. CASSAT: This is in reply to your letter of December 20, 1957, with reference to our conference of October 9, 1957, relating to the consent decree involving the General Motors Acceptance Corp.

We have given a considerable amount of attention in the Antitrust Division to the question of reopening this decree to provide more adequate relief to independent automobile finance companies. We have also given a great deal of consideration to a new proceeding in the automobile finance business. We have concluded, however, on the basis of all of the information which we presently have, that neither of these alternatives appears to be practicable at the present time. While this situation may change pending additional developments in the automobile finance business, this is the best answer I can give you at the moment.

With respect to your inquiry as to the ways you may be of assistance to us in addition to the considerable amount of help you have already given us, I suggest that you forward any information any of your members may have concerning coercion by General Motors of any of its dealers to take General Motors financing. In order to be useful in an antitrust enforcement proceeding, it would be necessary that any of these instances be supported by testimony of the dealer involved.

I would like to assure you of the continuing interest of the Antitrust Division in the competitive situation in the automobile finance industry. We shall continue to do everything we can to preserve competition in this industry within the limits of existing antitrust legislation.

Sincerely yours,

VICTOR R. HANSEN,  
*Assistant Attorney General, Antitrust Division.*

## STATEMENT OF EARL M. UTTERBACK, EXECUTIVE SECRETARY. INDIANA STATE TEACHERS RETIREMENT FUND

Mr. UTTERBACK. Mr. Chairman, and members of the subcommittee, my name is Earl M. Utterback and my residence is Kokomo, Ind.

I am presently employed as executive secretary, Indiana State Teachers Retirement Fund. I was elected a member of the State senate of Indiana and served 2 terms. I was formerly a member of the house for a period of 6 years.

At the opening of the 91st session of the Indiana Legislature I was approached by members of the Department of Finance Institutions of Indiana and conferred with them for the purpose of discussing the possibility of introducing legislation to correct abuses in connection with time sales of automobiles.

I should state that this agency of Indiana State government has supervision of automobile financing companies, consumer credit companies, building and loan companies, State banks and all licensees and banks both State and National.

I received during the general assembly sessions a lot of information on which I made a study of problems involved.

I reached, after careful examination of the situation, the conclusion that legislation was necessary to correct the abuses involved in the financing of time sales of automobiles.

I, therefore, introduced in the Indiana State Senate, Senate bill 419, which would have required disclosure to the retail buyer of any rebate of finance and insurance charges in installment sales contracts which the sales finance company paid to the dealer originating the sales contract.

The bill which I introduced into the Indiana Legislature would have required sales finance companies to notify the retail purchaser of any finance charge or insurance charge rebated to the dealer originating the sales finance contracts in excess of an amount fixed by the department.

I felt that requiring this would lower participating allowances to a realistic and reasonable amount and restore competitive conditions to the market for the sales finance paper.

Mr. Chairman, I, along with the other members of the senate, were vitally interested in the protection of the consuming public and were able to pass this bill through the senate by a vote of 4 to 1.

Thereafter the bill was appropriately referred to the banking committee of the House of Representatives. Unfortunately the bill never saw the light of day in the House. By coincidence the chairman of the committee was, as I understand it, a General Motors dealer.

The CHAIRMAN. What did you expect?

Mr. UTTERBACK. I expected that.

I, along with my friends in the General Assembly, used every honorable means in attempting to get action on this bill from the chairman of the banking committee, but to no avail.

I appreciate this opportunity to express my views on this legislation contained in House bill 71.

I have been surprised at the statement that higher charges to time buyers would result if GMAC were separated. I was surprised that anyone would think that GMAC assured low rates to time buyers. The facts coming to my attention did not support any such contention.

The practice of permitting unlimited and unregulated participation allowances is definitely not in the public's interest.

The rebate is an additional expense to the installment buyer because it must be included in the total finance charge and must result in a higher finance charge. This also tends to restrict, if not eliminate, competition.

GMAC is usually in a position to offer higher participation allowances to dealers than independent sales finance companies.

Dealers are inclined to direct their business to the company which will provide the largest reserve.

Competition for sales finance paper, therefore, is on a strictly competitive basis and the finance charge or rate to the consumer is given little consideration by the dealer who originates the contracts.

The small operator cannot afford to compete in this type of market and will ultimately be squeezed out of business. The large finance companies will then have complete control of the market for sales finance paper.

High rates are not accounted for by the difference between the charges of GMAC and other companies but by the packing of these



charges. All companies permitted it because it was a competitive condition.

No company seemed able to avoid it including GMAC. That is why I introduced the legislation to minimize packing through exposure.

I may say here, Mr. Chairman, that the department of financial institutions gave us so much evidence of this practice and the practice of particularly young buyers of automobiles who would go into the salesroom and their big problem was:

"How will I finance it?"

And, of course, that was taken care of by the dealer immediately, and it was convenient, particularly in certain salesrooms, for many to decide to finance it from certain companies.

The Indiana Department of Financial Institutions referred to previously in this testimony brought proof, and members testified that the legislation for Indiana proposed in senate bill 419 was definitely in the public interest.

Members of the department stated that, by disclosing to the purchaser the excessive rebate charges, a healthy condition of competitive enterprise would prevail.

The Indiana State Banking Committee was assured that by disclosure of the amount of participating allowances the public would know and would seek the finance agency and the dealer which rendered the best service at the lowest rates.

The senators by passing senate bill 419 by a large majority went on record that the retail purchaser had a right to know exactly how much of the so-called finance charges were true finance charges and how much was paid back to the dealer.

With the increased marketing pressures in the automobile business it was brought to light in Indiana that dealers were demanding increasingly greater participation in the finance charge and the major finance companies to a degree were able to use their superior borrowing powers to meet these demands.

The situation, in my opinion, is reaching the point where the role of the marketplace is not one of equity, but what the traffic will bear.

As was brought out in the Senate hearings some companies, including GMAC, have facilitated this activity by providing their dealers with variable rate charts, as 6, 6½ percent charts, 7½ percent charts, and so forth.

And the dealer uses whichever one he thinks he can get by with, and the difference goes to him.

I should like at this point to refer to an invoice No. 18779 which I introduced before the Senate Subcommittee on Antitrust and Monopoly on Thursday, April 16, 1959. It represents the sale of a new car to Charles T. King, Jr., of Muncie, Ind., by the Hedges Pontiac, Inc., of Indianapolis, Ind.

The car was a new 1958 Bonneville convertible, and the invoice discloses that its total cash price, including optional equipment, was \$5,600.07.

The downpayment on the car consists of a trade-in of a Ford convertible which, after paying an unpaid balance on it, amounted to \$1,659.97, leaving a cash unpaid balance of \$3,947.03.

This new Pontiac was financed by Hedges Pontiac through General Motors Acceptance Corp.

There was no automobile insurance included in the transaction because the previous insurance on the Ford was to be transferred to the new car.

The cost of financing the \$3,947.03 cash balance amounted to \$943.57, or almost 25 percent of the unpaid balance. The monthly installments were \$135.85 and the contract ran for 36 months.

The charge per \$100 for financing this new car was \$8 per \$100 per year. No insurance of any kind was included in this amount. You will recognize that this is a very high charge.

I should add that \$8 per \$100, when paid on a declining balance, is just about double or almost 16 percent simple interest. You understand, that this contract is paid out in monthly installments. I have examples of other deals that are typical transactions. They are all GMAC deals.

Now, Mr. Chairman and members of the committee, based on the finding in my State and included in my testimony, there is an extreme likelihood of monopolistic practices where the manufacturer and the financing agency are one and the same combination. I think certainly the customers would benefit from the legislation proposed in House bill 71.

If GMAC was separated and made an independent, then GMAC dealers would offer the plans of many finance companies and the banks to their customers. This is the kind of competition that I feel should exist.

Mr. Chairman, I have taken a lot of your time in talking about some of our findings in our investigations in Indiana. I am interested in eliminating the kind of packs we found to exist. You may be wondering why I am down here before a Federal legislative body in support of antimonopolistic legislation.

I feel strongly that if GMAC were to be divorced from GM and would have to stand on its own competitive feet, it would tend to eliminate the confusion and would tend to minimize the opportunity to pack their charges.

Mr. Chairman, I feel your committee is on the right road to more economic freedom in America.

The CHAIRMAN. You state on page 6 which you just read:

If GMAC was separated and made an independent, then GM dealers would offer the plans of many finance companies and the banks to their customers.

Would you say that that is not the case today?

Mr. UTTERBACK. Our investigation, Mr. Chairman, verified the fact that it isn't always the case certainly; it certainly is not always the case. We had many cases in which there were exorbitant charges, and the advantages seemed to be with the General Motors dealers, and the evidence we found was that the others did not have some of those same advantages.

Mr. ROGERS. Mr. Chairman?

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Do you understand that the GMAC now only finances General Motors dealers paper?

Mr. UTTERBACK. Do I understand what?

Mr. ROGERS. That the GMAC now confines its financing to General Motors dealers paper. Do they finance Ford or Chrysler, or do you know?

Mr. UTTERBACK. It is my understanding that they would finance their own cars.

Mr. ROGERS. They confine themselves exclusively to that of their own cars, do they not?

Mr. UTTERBACK. I presume so.

Mr. ROGERS. I have been told—I don't know——

Mr. UTTERBACK. Well, I assume that is true.

Mr. ROGERS. If GMAC was divorced from General Motors, you would have no objection to them going into the financing of cars other than those made by General Motors, would you?

Mr. UTTERBACK. I think that would be a fine state of affairs, I really do. I think it would put them on an equal competitive basis; that is right.

Mr. ROGERS. Some statements have been made to the effect that if GMAC and Ford Finance were permitted to generally engage in financing in addition to their own cars, that they would run the rest of the people out of the business. Do you agree with that statement or not?

Mr. UTTERBACK. I think in America that we certainly, if we are all on the same basis, our free enterprise system, we certainly ought to be able to, if we had free competitive markets and everything is on the right basis, why would it be harmful? In other words, the greater the competition the lower the cost to the person who purchases the car.

Mr. ROGERS. On page 3 of your statement you say :

Competition for sales finance paper, therefore, is on a strictly competitive basis, and the finance charge or rates to the consumer is given little consideration by the dealer who originates the contract. The small operator cannot afford to compete in this type of market, and will ultimately be squeezed out of business.

The large finance companies will then have complete control of the market and for sales finance papers.

Now, if that is true, and GMAC is so big as is Ford Finance, wouldn't they soon drive everybody out of the market?

Mr. UTTERBACK. I assume that their competitive position wouldn't be so favorable in this other case, and they would be put more on an equal basis with the other finance companies.

Mr. ROGERS. Then it is your opinion that if they were divorced and did not have the favored position as testified by Mr. Jones, then they would have to compete equally with others, and that their likelihood of growing bigger and better would not be so successful?

Mr. UTTERBACK. That is exactly right.

Mr. ROGERS. And those who might get in and give them competition could take their business as well as not?

Mr. UTTERBACK. That is right. Auto dealers in Indiana, our investigation showed, were interested in the money they made on this finance charge rather than on the deal itself.

In other words, that was pretty bad back in 1959 particularly, and I want to make it clear that I am not posing as an expert on finances, but I was interested in the standpoint of public service to introduce this legislation, and we had come before our committee several young men who had paid these exorbitant prices for financing, and the dealers, some admitting that the profit they made was on the financing and not on the deal, in my estimation that is wrong and not in the public interest.

Mr. ROGERS. Thank you.

The CHAIRMAN. You made a study of this matter in your State, have you not?

Mr. UTTERBACK. Right.

The CHAIRMAN. You have made a study of this entire subject.

Would you say as a result of your studies that when you have General Motors operating with the General Motors Acceptance Corp., then General Motors has a built-in competitive advantage?

Mr. UTTERBACK. Yes.

The CHAIRMAN. Because of GMAC. Would you say that is correct?

Mr. UTTERBACK. I definitely do say that is correct.

The CHAIRMAN. That is, GMAC has a built-in competitive advantage; put it that way.

Would you say also that it is only natural for GM dealers to want to have the best relations possible with General Motors; is that correct?

Mr. UTTERBACK. Yes.

The CHAIRMAN. And they would want to curry as much favor with General Motors as possible.

And wouldn't you find it was natural for GM dealers to gravitate with their paper to General Motors Acceptance, in order to curry favor with the parent company of GMAC?

Mr. UTTERBACK. Definitely.

The CHAIRMAN. Is that a fair conclusion?

Mr. UTTERBACK. That is right.

The CHAIRMAN. Would you say also that GM dealers are wont to give their paper to General Motors Acceptance Corp., for fear of being loaded by GM with cars which they don't need, of having franchises cut off, of new dealers granted franchises? Matters of that sort are always in the minds of the GM dealer, which prompts him naturally to go to General Motors Acceptance Corp., or else. Is that correct?

Mr. UTTERBACK. That is right. I think there are many ways they could make it an advantage to the General Motors and the General Motors dealer could certainly use several ways in which he could give an advantage to General Motors Acceptance Corp.

The CHAIRMAN. Now one other question.

As a result of what you have indicated, isn't there a decided advantage to the General Motors as a manufacturer and a disadvantage to competing car manufacturers?

Mr. UTTERBACK. I agree with that, yes.

The CHAIRMAN. Mr. Meader?

Mr. MEADER. Mr. Utterback, what year was the 91st session of the Indiana Legislature?

Mr. UTTERBACK. 1959.

Mr. MEADER. 1959?

Mr. UTTERBACK. Right, January—

Mr. MEADER. And in what year did you introduce this senate bill that passed the senate but not the house?

Mr. UTTERBACK. In 1959.

Mr. MEADER. In that year?

Mr. UTTERBACK. Yes.

Mr. MEADER. And were you ever in the automobile finance business?

Mr. UTTERBACK. No, sir.

Mr. MEADER. Were you ever in the automobile business in any way?

Mr. UTTERBACK. No, sir.

Mr. MEADER. What was your occupation prior to being executive secretary?

Mr. UTTERBACK. I was a teacher, a teacher for some 28 years, and I would like to say, Mr. Meader, that many of our seniors graduating out of high school, the first thoughts in their minds is to buy a car. This thing came to me very forcefully. Their first objective is evidently to buy a car. They go buy a car and the first question is, "How will I finance it?"

And I have seen this time and time again, and I thought that this legislation that I introduced, after hearing the experiences from the members of the department of financial institutions, that this certainly was in the public interest.

Mr. MEADER. Your primary basis for expertise in this field is the investigation as a member of the State legislature?

Mr. UTTERBACK. That is right.

Mr. MEADER. You don't pose as a real expert in the field?

Mr. UTTERBACK. No, sir.

The CHAIRMAN. Thank you very much.

Mr. TOLL. May I ask a question?

These interest rates, Senator, which you referred to in your statement, are they all below the ceiling under the Indiana law?

Mr. UTTERBACK. Yes.

Mr. TOLL. They were all below the ceiling?

Mr. UTTERBACK. Yes.

Mr. HOLTZMAN. Mr. Chairman, just one statement.

I want to indicate that the witness was very kind in this case that he referred to. He said they were high interest rates. I think it was highway robbery.

Mr. UTTERBACK. That is right. Thank you very much.

The CHAIRMAN. Thank you very much.

(Mr. Utterback's prepared statement follows:)

Mr. Chairman and members of the subcommittee, my name is Earl M. Utterback and my residence is Kokomo, Ind.

I am presently employed as executive secretary, Indiana State Teachers Retirement Fund. I was elected a member of the State Senate of Indiana and served two terms. I was formerly a member of the house for a period of 6 years. At the opening of the 91st session of the Indiana Legislature I was approached by members of the Department of Finance Institutions of Indiana and conferred with them for the purpose of discussing the possibility of introducing legislation to correct abuses in connection with time sales of automobiles.

I should state that this agency of Indiana State government has supervision of automobile financing companies, consumer credit companies, building and loan companies, State banks and all licensees and banks, both State and National.

I received during the general assembly sessions a lot of information on which I made a study of problems involved. I reach, after careful examination of the situation, the conclusion that legislation was necessary to correct the abuses involved in the financing of time sales of automobiles.

I therefore introduced in the Indiana State Senate, senate bill 419, which would have required disclosure to the retail buyer of any rebates of finance and insurance charges in installment sales contracts which the sales finance company paid to the dealer originating the sales contract.

The bill which I introduced into the Indiana Legislature would have required sales finance companies to notify the retail purchaser of any finance charge or insurance charge rebated to the dealer originating the sales finance contracts in excess of an amount fixed by the department.

I felt that requiring this would lower participating allowances to a realistic and reasonable amount and restore competitive conditions to the market for the sales finance paper.

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Thereafter the bill was appropriately referred to the banking committee of the house of representatives. Unfortunately the bill never saw the light of day in the house. By coincidence the chairman of the committee was, as I understand it, a General Motors dealer.

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The situation, in my opinion, is reaching the point where the role of the marketplace is not one of equity, but what will the traffic bear?

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The downpayment on the car consists of a trade-in of a Ford convertible which, after paying an unpaid balance on it, amounted to \$1,659.97, leaving a cash unpaid balance of \$3,947.03.

This new Pontiac was financed by Hedges Pontiac through General Motors Acceptance Corp.

There was no automobile insurance included in the transaction because the previous insurance on the Ford was to be transferred to the new car.

The cost of financing the \$3,947.03 cash balance amounted to \$943.57 or almost 25 percent of the unpaid balance. The monthly installments were \$135.85 and the contract ran for 36 months.

The charge per \$100 for financing this new car was \$8 per \$100 per year. No insurance of any kind was included in this amount. You will recognize that this is a very high charge.

I should add that \$8 per \$100 when paid on a declining balance is just about double or almost 16 percent simple interest. You understand, that this contract is paid out in monthly installments. I have examples of other deals that are typical transactions. They are all GMAC deals.

Now, Mr. Chairman and members of the committee, based on the finding of my State and included in my testimony, there is an extreme likelihood of monopolistic practices where the manufacturer and the financing agency are one and the same combination. I think certainly the customers would benefit from the legislation proposed in H.R. 71.

If GMAC was separated and made an independent then GM dealers could offer the plans of many finance companies and the banks to their customers. This is the kind of competition that should exist.

Mr. Chairman, I have taken a lot of your time in talking about some of our findings in our investigations in Indiana. I am interested in eliminating the kind of packs we found to exist. You may be wondering why I am down here before a Federal legislative body in support of antimonopolistic legislation.

I feel strongly that if GMAC were to be divorced from GM and would have to stand on its own competitive feet, it would tend to eliminate the confusion and would tend to minimize the opportunity to pack their charges.

Mr. Chairman, I feel your committee is on the right road to more economic freedom in America.

The CHAIRMAN. Our next witness is Mr. David B. Cassat, president of the Interstate Finance Corp., of Dubuque, Iowa.

### STATEMENT OF DAVID B. CASSAT, PRESIDENT, INTERSTATE FINANCE CORP., DUBUQUE, IOWA

Mr. Cassat. Mr. Chairman, I want to thank you for your gracious invitation to appear here today and testify on this matter, because I have been interested in it a long time.

I wish to present the following statement:

I am appearing before you today representing the American Finance Conference and my own company, the Interstate Finance Corp. of Dubuque, Iowa. I wish to testify in favor of H.R. 71 because it will cure an intolerable situation of monopoly which has been built up by General Motors and GMAC in the last 35 years.

Mr. Chairman, there seems to be a widespread feeling that GMAC is sort of a "holy cow;" that nothing must be done to harm this giant because it performs a service in its field better than anyone else.

The CHAIRMAN. Of course it was said that what was good for General Motors was good for the entire country.

Mr. CASSAT. I propose to you, gentlemen, that H.R. 71 will make the services of GMAC available to all car manufacturers, automobile dealers, and purchasers of automobiles regardless of make and, if their service is better than that of anyone else, then this bill will achieve a great benefaction to the automobile industry and to the entire economy of this country.

Why should their remarkably excellent services, so highly regarded by the thoughtless, be available only to the favored few?

I say to you, Mr. Chairman, that I invite, for myself and for all of the independents; I invite GMAC to come out from behind the skirts of her maternal benefactor and fight for this finance business in a free and competitive market in the United States and let's see how good they are. If they are so important and so perfect, why are they not willing to give up all of the monopolistic and illegal practices which made them what they are today and compete on an equal basis with little people like my company?

I say illegal practices because they have been convicted criminally in the Federal courts of this country of these illegal practices.

I want to remind you, these people owe the advantage they have in this market to the illegal practices in which they have indulged, while, over the years, they have shrouded themselves in an aura of respectability, which is nowhere supported by the records of the court case or the facts of life in the automobile finance world. Their domination in this field has come from using their crushing size and power to destroy others and to gain favors in the financial marketplace and elsewhere.

If they are so good, Mr. Chairman, on behalf of all of the independent finance companies and all of the banks who handle this business in their local communities cheaper and better than GMAC does, I invite GMAC to divest itself of all of its monopolistic power and illegal practices and serve the American marketplace complete.

The CHAIRMAN. Let's pause a minute to see how respectable this company is.

At the very present time they are in the courts charged by the Government with violations of the Sherman Act and of other antitrust laws in cases involving earthmoving machines and diesel engines.

Mr. CASSAT. And buses.

The CHAIRMAN. And buses. And they are under grand jury investigation for various other activities, at this very moment.

Now, I am going to place in the record as soon as I get the data, the number of times they have been accused of antitrust violations heretofore. I will get that data for the record and when I get it I will read it.

Mr. CASSAT. Thank you, sir.

It is only through the long history of legal actions that we come to your committee today, supporting H.R. 71 because normally you would expect the antimonopoly laws of the United States to be enforced by the Department of Justice and to eliminate such situations as are clearly evident in the automobile finance picture.

Going back to the 1930's when nearly 100 percent of all automobile retail conditional sales contracts were sold by the dealers to finance



companies, there were three so-called "national" companies—GMAC, owned by General Motors, Universal CIT and Commercial Credit Trust. Each of these three national companies had a contractual relationship with a factory or complete ownership in the case of GMAC. They were purported to control 75 percent of the business and about 1,500 independents controlled the other 25 percent.

The banks, gentlemen, didn't begin to consider this business as legitimate business, and no respectable banker would be caught dead buying an automobile contract in those days.

In 1936, when I was president of the American Finance Conference, a committee presented the facts in the automobile finance world to the Department of Justice with the result that an investigation was authorized.

A grand jury indicted all of the three manufacturers and the three national companies. The evidence was overwhelming and Chrysler and Ford, with their finance companies, Commercial Credit and CIT, signed consent decrees agreeing to nondiscriminatory treatment of finance companies and to no factory affiliation with any finance company, except that the decrees provided that GM was to be divested of GMAC. GM and GMAC stood trial on its indictment and was convicted by a jury in 1949. This conviction was appealed and upheld by the circuit court and the Supreme Court refused to review the decision.

Gentlemen, if you want to read a hair-raising story of coercion, of outright, terrible coercion on American businessmen, read the record of that trial. It is all in the record of the court.

The Government filed a civil suit in 1940 seeking divestiture but trial of the suit was delayed through tactics well known to most attorneys, war intervened and when a consent decree was negotiated, effective in 1952, the Government settled for nondiscriminatory agreements but no divestiture. The reason given for the consent decree was to avoid the time and trouble of a lawsuit.

And, gentlemen, those seven words come right out of that consent decree. This is actually the fact:

That the reason that the consent decree says that they made this deal, to avoid the time and trouble of a lawsuit.

The CHAIRMAN. I think that is outrageous.

Mr. CASSAT. There is no question about it, Mr. Chairman. This is one of the most outrageous chapters in the annals of our courts and of the Department of Justice. There is no question about it.

No one has ever been able to understand why such a consent decree was agreed upon by the Government. Divestiture is the only remedy to assure free competition in the automobile finance industry.

In 1959, appearing before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, former Assistant Attorney General Thurman Arnold summed up the legal situation, in regard to GM and GMAC, as follows, and I quote from the hearings on auto financing legislation, page 265; and remember please, now, that this is a former Assistant Attorney General speaking:

(1) In my view the combination between General Motors and General Motors Acceptance Corp. violates every principle and policy embodied in the Sherman Act and particularly section 7 of the Clayton Act.

(2) Were it not for the procedural obstacle that has developed due to the action of the Department of Justice in entering the decree in 1952, the suit could be successfully prosecuted.

(3) Nevertheless, in spite of the illegality of the manufacturer-finance combinations which are before this committee, the Government has itself in a procedural trap by virtue of the consent decrees of 1952 which make General Motors immune from prosecution. These decrees are *res adjudicata*. They cannot now be altered. Legislation is required to make General Motors, Ford, and Chrysler subject to the same laws as apply to other American corporations. This is not, as is charged, special legislation to treat the automobile companies differently from other industries. It is rather legislation by which the GMAC-GM combination is to become subject to the same law as the GM-du Pont combination which has recently been declared illegal.

The CHAIRMAN. And it is similar to the *Paramount Pictures* case where the Paramount Producing Co. had to divorce itself from Paramount Theaters.

Mr. CASSAT. Right.

The CHAIRMAN. In other words, producers had to be divorced from distribution.

Mr. CASSAT. Right.

The CHAIRMAN. There is not much difference, in my opinion.

Mr. MEADER. Would that not be more comparable to the dealers, the theaters comparable to the dealers, and General Motors comparable to Paramount?

The CHAIRMAN. I do not think so. I would be glad to discuss that with you, but I do not think so.

Mr. CASSAT. Now, what has happened since the consent decree? It didn't take it long to happen because there was testimony offered in the 1959 hearings, previously quoted, that GMAC extends more than 80 percent of the automobile installment credit extended by all sales finance companies on cars manufactured by GM.

The CHAIRMAN. Let me ask this question. Before the consent decree was entered, was your group consulted by anybody in the Department of Justice?

Mr. CASSAT. George, did you hear his question? The three men that were in the courtroom that day are all in the room, sir, Mr. Thomas Rogers, George Omacht, and I.

They would not listen to us at all. They would not give us a hearing beforehand.

The CHAIRMAN. But before the entry of the consent decree, was your group consulted as to the nature of the matter?

Mr. CASSAT. We asked for a chance to file a brief as *amicus curiae*. They refused it. They would not let us do it.

The CHAIRMAN. They refused your brief as *amicus curiae*?

Mr. CASSAT. That is right.

The CHAIRMAN. Where was this? What court was this?

Mr. CASSAT. I beg your pardon?

The CHAIRMAN. Where was this tried, in what court?

Mr. CASSAT. In Chicago, the court of Judge La Buy.

The CHAIRMAN. Who was the judge?

Mr. OMACHT. Judge La Buy.

Mr. CASSAT. The same fellow that did not want to divorce du Pont and General Motors. The Supreme Court had to hit him over the head twice.

If we ever get this up to the Supreme Court, Mr. Chairman, I think we know what the answer will be. I sure would like to try.

Now, what has happened since the consent decree? There was testimony offered in the 1959 hearings that GMAC extends more than 80

percent of the automobile installment credit extended by all sales finance companies on cars manufactured by GM.

Now, that is what an independent finance company witness claimed. That was myself. If you will turn to page 482 of the 1959 hearings, I would like to show you on a graph here of what happened to the volume of automobile finance paper sold to automobile finance companies on General Motors products for the 10 years from 1948 to 1957.

This graph shows that there are six companies graphed here specifically, and then all the rest of them are graphed in one line.

GMAC—

The CHAIRMAN. What page is that?

Mr. CASSAT. Page 482, and this is the best illustration I know to prove to any reasonable person that the consent decree of 1952 did not alleviate anything.

It just gave them a hunting license.

I have always called it a hunting license instead of a consent decree. They started out in 1948 with about 18 percent of the paper financed by finance companies. This does not include what is put in the banks at all. This is the retail paper sold to finance companies.

And of that, they had—this is not the General Motors products; this is all paper, all the paper sold to finance companies.

It started out a little below 20 percent. In 1949 it went up to about 27 percent. In 1950 it was a little over 29 percent. Then it dropped back in 1951 and 1952, and then the consent decree was entered, and look at them go. They took off.

In 1953 they were up to 35 percent. In 1954 they were up to 38 percent, and in 1957 they were 41 percent of all the paper sold to finance companies.

Now, that is what I claim. What did General Motors claim? They filed a statement which said that GMAC financed 46 percent and other finance companies 7 percent of all GM cars bought on credit in 1957—I was talking about all the finance paper handled by all the companies; they are talking about their own products—with a breakdown of 41 percent and 7 percent for 1958. These relative strengths within the sales finance company business convert to 87 percent for GMAC and 13 percent for independents in 1957 and 85 percent and 15 percent in 1958.

These figures eliminate the direct loans which automobile buyers arrange for themselves with credit unions, banks, and so forth, and which dealers do not handle as well as purchases of dealer installment paper by banks and other agencies which, though competing for dealer patronage, are a different kind of financial institution and they make no attempt whatever to finance the industry. In 1941, contrasting the figure of 1957 and 1958, GMAC handled less than 47 percent of GM retail paper bought by finance companies.

Mr. MEADER. Mr. Cassat, do you not think it would be proper at this point in your statement to tell what was financed by the banks?

This table that he refers to at page 482 of the hearings is only the finance companies. Is it not true that during this period, about half the paper had been financed by the banks?

Mr. CASSAT. If you will turn, sir, to page 480 of this document, you will find here for the years 1941 to 1957, leaving out the war years, the grand total of installment credit extended; you end up in 1957

with a \$42 billion figure, but only \$16 billion of that is automobile paper.

Now, on the next page there is a breakdown of the automobile paper as to who handles it, and, in the first column, you find what the sales finance companies handled; and in the second one, you find what the commercial banks handled; and in the third column, you find what all others handled.

Those are credit unions, dealers own finance companies where they carry some of their own paper. There may be a small amount there that has not been actually purchased by small loan companies. But that is all other, and it is not a very consequential amount.

So that the figures that I have shown you in the chart relate to the third column or the second column there, the sales finance company volume. And what they did to us after the 1953 consent decree is shown very graphically here.

GMAC's share of this market grew faster than GM's share of total car registrations over the 5-year period, and even rose in 1957, when GM's relative business volume dropped. With 1952 as an index of 100, GMAC's penetration in 1957 was 143.7, while GM's was 107.5.

The AFC study was based on Federal Reserve Board statistics on extensions by sales finance companies on new and used passenger cars and commercial vehicles, with GMAC volume based on AFC estimates derived from GMAC annual reports and registration statements.

GMAC filed with the Senate subcommittee a different set of figures on its share of the total sales finance company market, but when these are converted to index figures, the penetration pattern corresponds to the one prepared by the AFC. For example, the GMAC derived index figure for 1957 (1952=100) is 146.8, as against 143.7 in the AFC study.

We are close enough together that I do not think we should argue about that.

(The table referred to follows:)

*GMAC and GM market penetration*

Year	GMAC (AFC study)		GMAC (GMAC study)		GM (AFC study)	
	Percent of all sales finance companies automobile extensions	Index: 1952=100	Percent of all sales finance companies automobile extensions	Index: 1952=100	Percent of industry new-car registrations	Index: 1952=100
1950.....	29.43	103.5	28.7	108.3	45.38	108.7
1951.....	28.35	99.7	26.9	101.5	42.83	102.6
1952.....	28.44	100.0	26.5	100.0	41.74	100.0
1953.....	35.12	123.5	33.4	126.0	45.07	108.0
1954.....	38.16	134.2	35.7	134.7	50.70	121.5
1955.....	38.52	135.4	37.3	140.8	50.76	121.6
1956.....	40.29	141.7	38.8	146.4	50.78	121.7
1957.....	40.86	143.7	38.9	146.8	44.85	107.5

Source: Federal Reserve Board G.20 releases, and AFC and GMAC estimates of breakdowns; R. L. Polk & Co. registration reports on new cars.

Mr. CASSAT. Now, I follow here with some tables, with the figures that substantiate that. I think I will avoid reading these in the interests of time, Mr. Chairman, and go on to the next page.

The volume of retail business for these years shows a pattern of growth for both GMAC and independents. But the disparity recurs, this time in the rate of growth. GMAC's retail automobile extensions in 1957 were 205.7 percent of its own volume for 1952, whereas independents' retail auto volume in 1957 was only 116.5 percent of their own volume for 1952. In the poor auto sales year of 1958, GMAC's volume fell off, but still was 161.1 percent of its 1952 figures, while independents slipped below their 1952 volume, to 92.4 percent.

Then in the table below you see the exact figures as reported from the Federal Reserve Board releases for industry totals and the GMAC reports on percentage to the Senate Antitrust and Monopoly Subcommittee in 1959 for the breakdown.

(The table referred to follows:)

*Relative growths of auto volume, GMAC and independents, 1950-58—  
Amounts of retail extensions compared to 1952 levels*

[Dollars in thousands]

Year	Total, sales finance companies	GMAC	Percent of own 1952 volume	Independents	Percent of own 1952 volume
1950.....	\$4,096,000	\$1,175,600	82.6	\$2,920,400	74.0
1951.....	4,277,000	1,150,600	80.8	3,126,400	79.2
1952.....	5,368,000	1,422,600	100.0	3,945,400	100.0
1953.....	5,971,000	1,994,300	140.1	3,976,700	100.7
1954.....	5,648,000	2,016,300	141.7	3,631,700	92.0
1955.....	8,239,000	3,073,100	216.0	5,165,900	130.9
1956.....	7,347,000	2,850,600	200.3	4,496,400	113.9
1957.....	7,526,000	2,927,400	205.7	4,598,600	116.5
1958.....	5,941,000	2,293,200	161.1	3,647,800	92.4

Source: Federal Reserve Board G.20 releases for industry totals; GMAC reports on percentages to Senate Antitrust and Monopoly Subcommittee, 1959, for breakdowns.

Mr. MALETZ. Mr. Cassat, do you feel that the sales financed market, that is, the business of buying sales installment contracts from the dealers, is a separate market from the business of lending institutions loaning money directly to borrowers?

Mr. CASSAT. Yes, sir.

Mr. MALETZ. Why is that?

Mr. CASSAT. Well, now let me say two things about that. First, I have been racking my brain all day, since this gentleman asked the question about the bank business today, as to where I saw these figures, but I cannot find them.

The banks get, as I show you from the Federal Reserve figures, about 43 percent of the automobile sales contracts, but over half of it, about 51 percent of what they get is direct loans to their own customers to buy cars, and they are reported by them as automobile credit extended. So really they have only about what—20 or 21 percent, perhaps, of actual conditional sales contracts purchased from dealers.

Mr. MALETZ. Are banks which purchase sales installment contracts in direct competition with sales finance companies?

Mr. CASSAT. Say that again?

Mr. MALETZ. Are not banks which purchase sales installment contracts from dealers in direct competition with sales finance companies?

Mr. CASSAT. Well, now, they are and they are not. Let me tell you this. It did not used to be so respectable to buy on time as it has been since the banks got into the picture. In my estimate, they have

originated perhaps half of the business they have that would not even be there if they were not financing the purchases.

Do you see what I mean?

You cannot prove this. There are no figures that will ever prove it. But a lot of that paper is what you would call cream paper. They would say:

Well, I would loan that fellow \$2,500 on his note, if he wanted me to, but he came to me and wanted me to finance a car so I did it.

I am a director of a bank. We do it all the time.

Mr. MALETZ. The reason for asking this question is to determine what the relevant market is, and to determine whether or not there is competition so far as the dealers are concerned—

Mr. CASSAT. Yes.

Mr. MALETZ (continuing). As between the sales finance companies as well as the banks themselves?

Mr. CASSAT. This is right.

Mr. MALETZ. Because if the banks are in direct competition with the sales finance companies, the figures that you have presented would not reveal the entire picture?

Mr. CASSAT. Would not reveal the entire picture, that is correct; that is correct.

Mr. MALETZ. Your figures are predicated on the assumption that banks are not in direct competition with sales finance companies in the purchase of paper from dealers?

Mr. CASSAT. The way I like to explain it is this: The banks are not going to finance this industry. They will not loan these dealers all wholesale—I mean all of them.

Sure, they might take one that is worth \$2 million and has two or three farms and two or three office buildings, and a couple of motels, they might finance his wholesale for him on a plain note, skim off some of the cream, you see, but they will not finance the industry, and nobody is going to finance it but the finance companies when the chips are down.

The finance company finances the automobile industry, and don't ever forget it.

Where would they have been in 1932 and 1933 without us? They came out of that depression like a football fullback going through a hole through tackle.

Why?

Because they had credit available so that every car they could produce could be sold. If they had been dependent on the banks at that time, they would have been shut up for 2 or 3 more years.

The banks will never, in my opinion, finance the automobile industry. All they are doing: (1) They are originating a lot of new business, people who would not buy on time if they could not do it at the bank; (2) They are skimming off some of the cream.

But the finance companies are down here underneath the industry supporting it, two or three of us bidding for every contract the dealer has, and the customer, outside of the pack, is getting the best deal he ever had.

I want to say something more. I did not intend to say this. My company's yield on its retail paper per dollar, per annum, has gone down from 23.4 in 1936 to 13.4 today. Now, will you show me another

industry that in these inflationary times, in those 25 years, has reduced their price? Show me one.

We have. We have almost cut it in two. How? Bigger notes. Our average note used to be \$280. Now it is \$1,800, \$2,000.

Bigger volume, mechanization back in the bookkeeping department, every possible economy known that we can dig up, plus the fact that our profits have been diminishing all this time to the point where everybody is beginning to wonder if he had not better be doing something else, if it is going to be this kind of a rat race much longer.

Mr. MALETZ. Mr. Chairman?

Mr. Cassat, may I inquire at this point with respect to your company's return.

I take it you are talking about return on net worth, your company's return on net worth?

Mr. CASSAT. Yes.

Mr. MALETZ. And last year you said it was 13.5 percent?

Mr. CASSAT. No, sir. I wish it had been. Last year it was less than 10 percent on net worth. I said that the yield—now, this is a very difficult thing to get straight. For pity's sake, let us get this record straight on this statement I have made.

The yield per dollar per year, including all income, commission on insurance, everything that goes in, has gone down from 23.4 in 1936 to 13.4 last month, the month of May.

Mr. HOLTZMAN. You say this is in spite of the increased volume, in spite of everything else?

Mr. CASSAT. In spite of the inflationary costs. The salaries are three times what they were, you know that, in 1936.

Mr. MEADER. I do not understand this distinction between the net worth phrase that our counsel used and your phrase per dollar per year.

Now, is there a distinction?

Mr. CASSAT. I have an accountant here, sir. Maybe I will get him to explain that a little later.

I am talking about the yield that we get. I am talking about our price to the consumer. I am talking about our price. It has gone down, down, down.

Mr. MEADER. You are not talking about your profits, then?

Mr. CASSAT. No.

Mr. MEADER. You are talking about your rates?

Mr. CASSAT. Now, if you want to talk about profits, I will talk about profits. They have gone down, down, down, too.

Mr. MALETZ. I am sorry. I was talking about this.

In 1960, what was your percent profit on net worth?

Mr. CASSAT. In what year?

Mr. MALETZ. 1960.

Mr. CASSAT. It was just under 10 percent.

Mr. MALETZ. You see, there was a tabulation placed in the record—

Mr. CASSAT. GMAC was 20.

Mr. MALETZ. There was a tabulation placed in the record of the Senate Antitrust Subcommittee showing for 1958—

Mr. MEADER. What page is that?

Mr. MALETZ. Pages 194 and 195. Well, 1957 apparently is the last full year for all the companies. In 1957, GMAC's percentage profit

on net worth was 18.5 percent; Commercial Credit obtained a percentage profit on net worth of 13.3 percent; Associates Investment Co., 19.3 percent.

Mr. CASSAT. What page is that?

Mr. MALETZ. Page 194.

General Finance Corp., 18.3 percent; Southwestern Investment Co., 14.6 percent; Interstate Finance Corp., Iowa, 16.9 percent; Allied Finance Co., Dallas, 23.1 percent; American Discount Co., 13.3 percent; so, apparently, there is a great deal of similarity as between the percent profit on net worth of the various sales finance companies, is that not correct?

Mr. CASSAT. Yes, sir.

Mr. MALETZ. The range is between 10 and 20 percent.

Mr. CASSAT. I cannot help but break in here to say this, Mr. Maletz—

Mr. MALETZ. And GMAC's return in 1957 was 18.5 percent.

Mr. MEADER. These are all after taxes?

Mr. MALETZ. After taxes.

Mr. CASSAT. I would like to say this, Mr. Maletz, in regard to the figures placed in the record by Mr. Yntema. On page 390, I listed the exact return on net income for the year to the average net worth at the beginning and end of the year.

In 1957, it was 12.33. He testified it was 16-something.

Mr. MALETZ. I remember that. I was quite curious about the discrepancy between Mr. Yntema's testimony with respect to your company and your own figures with respect to your own company.

Mr. CASSAT. And this figure is corroborated by letter from Bauman, Finney & Co., our auditors.

I will tell you what Mr. Yntema did. Mr. Jones has referred to doubletalk and innuendoes and so on. I would not accuse Mr. Yntema of making anything but a mistake in this case. He left out all of our preferred stock in figuring our return on our net worth, and his figures just are not true.

Our auditors sent us the right figures and I put them in the record here later in the same hearing.

So Mr. Yntema was seeking an advantage that I took away from him as far as my company is concerned and told the truth. Our figures are shown on page 390 for the 5 years under question as certified to by our public accountants.

A significant contract of the opportunities for independent sales finance companies in the GM market and the Ford market can be drawn from data in the Senate hearing record.

Sales finance companies provided the installment credit for about one-fourth of all new-car sales by Ford Motor Co. dealers, according to the manufacturer's spokesman.<sup>1</sup>

This 25 percent of total sales can be translated to an estimated 58 percent of all installment contracts sold by Ford dealers, if industry averages for 1958 are applicable. (Note: This was before Ford had reentered financing.) The Federal Reserve Board estimates that 62 percent of new cars were sold on time. Assuming that the FRB's report that 70 percent of auto installment credit extensions (new and used) was dealer paper also holds for new cars

<sup>1</sup> Senate hearings, 1959, op. cit., p. 204.



alone, it follows that 43.4 percent of total sales were sales involving dealer paper. Related to this figure, the 25 percent of total car sales handled by independent finance companies becomes 58 percent of the market in dealer paper. Purchases by banks and other institutions, and the few contracts held by dealers would be in the other 43 percent.

I would like to refer you again to the report, and please turn to page 61. I put into the record in the other hearing the amount of new-car paper we were able to get from the various manufacturers, and related it to their percentage of new-car sales in the country.

I could not get them for my territory, but I used the national figures for distribution.

General Motors registered in the United States, averaged 1950-54, the 5-year total, inclusive, 45.37 percent of all cars registered; Chrysler, 18.57; Ford, 25.12; and others, 10.94.

In the fourth column you find our percentages of new cars financed related to the percentage of manufactured makes. We got 19.76 percent of our new-car paper on General Motors products while they were making 45 percent of the cars, and let me remind you that during those 5 years a lot of that came from used-car lots from wheeler-and-dealer operations where they bought new cars off the new-car dealers.

Chrysler—we were ahead of the factory's share. The factory share was 18.57 percent of the market. Of our new cars financed, 23.2 percent were Chrysler products, so we found it easier to get.

Ford, we were just about on target. They had 25.12 percent: 24.9 percent of ours.

Now, look at the Hudson, Nash, Studebaker, Packard, Willys, Kaiser, Henry J., and all others. They only made 10.94 percent of the market, but they furnished us with 32.14 percent of our new-car volume.

What do you think of that for being a handicap in getting business?

And let me say, too, now, Mr. Chairman, I want to make one point very clear. The banks do not have any more luck penetrating General Motors dealers than we do. There was a banker who testified at the Senate hearings in detail about this, and I think he is going to testify in this hearing, and we will see if he has done any better in the last 2 years.

But the banks, in general, have no more luck breaking into this GM market than the finance companies do, and this in spite of the fact that their rates are lower, usually, than GMAC.

Mr. MALETZ. Mr. Chairman?

Mr. CASSAT, are your rates higher, comparable, or lower than GMAC rates?

Mr. CASSAT. They are comparable. There are some places where we give service they do not.

Mr. MALETZ. May I direct your attention to testimony by an official of the Ford Motor Co. before the Senate Antitrust Subcommittee?

Mr. CASSAT. What page?

Mr. MALETZ. He testified that GMAC offers finance and insurance rates lower in most areas than other finance companies.

For example, Mr. Yntema testified that GMAC has loaned money to GM dealers to carry their inventories of new cars at rates generally about one-half of 1 percent lower than those offered by other finance companies.

Is it or is it not a fact that GMAC's wholesale rates to finance the dealers' purchases are less than its competitors? I am talking now only about wholesalers.

Mr. CASSAT. Right.

Yes, sir; and I will tell you why.

A General Motors dealer, and I am talking now about a General Motors dealer, one who goes all the way, is one of the family. He has to sign a power of attorney.

They can ship him any cars they feel like, and they do. And they load him up to the cracking point. Now, the cracking point is where he quits trying. They load him up with 60 days' supply, 45 days' supply, and toward the end of the season they will clean out the slow sellers and send them to their dealers.

They have the power of attorney to do this. They know the way to make a dealer sell the most cars is to have him have a big, heavy inventory on which he is paying finance charge and, to do this, they have a lower rate. Now, that is the mobility of subsidy.

I am coming to that a little later. I want to talk about those five pockets. This is one of the hidden ones.

Mr. MALETZ. Mr. Yntema of the Ford Motor Co. testified, as follows, before the Senate Antitrust Subcommittee at page 200, and I quote:

On retail sales, GMAC also has provided financing and insurance at rates substantially below those generally made available by other finance companies. GMAC has offered financing and insurance services on retail deals without pushing extras that have high margins of profit to be split between the finance company and the dealer.

It has provided a streamlined financing and insurance service for dealers and consumers without the inclusion of high-cost frills.

It has made these services available to GM dealers at rates generally lower than those offered by competing finance companies. Many banks offer those services at rates as low as or even lower than those charged by GMAC, but banks are often more selective in risks they take, and there is fear in some quarters that bank financing may not always be available as a source of funds when credit is tight.

Could the subcommittee, sir, have your comments on this portion of Dr. Yntema's testimony?

Mr. CASSAT. Well, this, to my mind, explodes the idea that General Motors gives the lowest rates. The banks give the lowest rates. Almost in every instance, especially if the customer goes direct to them, they give the lowest rates.

Mr. MALETZ. You said the banks were not in direct competition with sales finance companies, but the question is:

Does GMAC provide lower rates to dealers than independent sales finance companies?

Mr. CASSAT. We match them several places. So does everybody that gets any business. We do not match them straight across the board. We will not finance the fellow they will not at those rates, and we find some of that. They do not give the service we do, Mr. Maletz.

Mr. MALETZ. Let me ask you this general question.

Is it correct that on retail sales GMAC has provided rates substantially below those of its competitors?

Mr. CASSAT. No, that is not true.

Mr. MALETZ. Then let me ask you this.

The same gentleman, Dr. Yntema, testified before the Senate Anti-trust Subcommittee that rates charged by independent sales finance companies have been about \$65 to \$100 higher than GMAC rates to dealers. Is that correct?

Mr. CASSAT. I think in my statement I have some figures that actually come out to \$60 a car, which is simply the mobility of the subsidy.

Now, let me say this, and this you have to get clear, gentlemen, if you are going to understand the automobile finance business.

These five pockets of subsidy, these five pockets of income the dealer has, are just like the old-fashioned shell game, only there are five shells on the table instead of three.

There is still only one pea, the pea being for profit, the dealer's profit, and these five shells are here and that pea is in there someplace, but you cannot tell whether it is in the finance pack, whether it is in the low wholesale rate or whether it is in getting him a few of the cars he wants right away, this week or next week, diverting them from somebody else, or whether it is over here in bringing him some additional insurance business even on cars he did not sell, sniping it from some other dealer and bringing it in here.

You never can tell right where the pea is, but it is there. It is under one of those five shells. It is a shell game that GMAC and General Motors work together that gives you a great mobility to this subsidy.

And if you think you are getting a low rate, look at their profits. That is the answer. Look at their profits. They are geared to 20 percent after taxes in every one of their corporations, and this is a top-level policy decision.

Mr. MALETZ. If General Motors dealers sold their paper to GMAC at lower rates than they sold their paper to independent sales finance companies, one would assume that General Motors dealers' car prices to the consumer would be less than the prices charged by non-GM dealers, is that right?

Mr. CASSAT. That is right.

Mr. MALETZ. Is that the fact, sir?

Mr. CASSAT. Let me state a historical event that proves the right answer to this.

Commercial Credit had all of Chrysler's business, just as tight as they could make it. If you gentlemen could have seen the contract that Chrysler had with Commercial Credit. It was described to me by a Department of Justice official as the most heinous, deliberate violation of the U.S. laws that they had ever found. They subpoenaed this contract and got it.

These fellows did not have time to telephone each other and burn it up. This contract provides that Commercial Credit will pay Chrysler 10 percent of their profits every year, in return for which Chrysler will force their dealers to give all their business to Commercial Credit, and they go in detail paragraph after paragraph describing the kind of things they will force them to do.

Mr. TOLL. They had a few tie-in sales, in other words?

Mr. CASSAT. Absolutely. There were details put in this. There was a great deal of fear expressed among some of the independents that when Commercial Credit agreed to its divestiture of its Chrysler

business, they would go out and swamp us fellows, just lick the pants off of us.

What happened?

Nothing, nothing at all. Their rates did not go up. They did not go up. They did not go down below us to murder us at all. They became an independent finance company. We live with them in friendliness and in all candor we are just out getting the business just like a couple of small boys from Iowa or any other place. It did not hurt the industry a bit, and it will not hurt if GMAC is divested, not a bit.

It will clear this whole thing up and we will be equals in the marketplace. There will be no club back here in the shadow.

And this is what we ought to have in this country. We ought to have a free marketplace where a little fellow and a big fellow can get along without any clubs.

The CHAIRMAN. Continue with your statement.

Mr. CASSAT. Yes, sir.

Analyzing the GM new-car market by the same approach, with the assumption that 70 percent of total auto credit was dealer paper, independents handled 10 percent of installment contracts made by GM dealers, while GMAC handled 59 percent. This leaves 31 percent for purchases by banks and others, and dealer-held paper.

Independents' 10 percent share of the GM dealers' installment paper market for new cars as against their 58 percent share of the Ford market, before Ford reentered financing, points up their heavily curtailed opportunity when competing with the factory-owned finance company.

#### GOOD SERVICE REQUIRES FACILITIES

I have a chart which shows that, if General Motors Acceptance Corp. gives such good service, if somebody thinks they give good service, it isn't GMAC that does it, it is the poor dealer.

The dealer does all their collecting. He makes out all the contracts, sends them in to GMAC, waits for his money, then he collects them all and has to sell all the repossessions and all that sort of thing.

In order to finance their enormous business, they have only 272 offices in the entire United States. This chart here gives you the distribution by States of the General Motors Acceptance Corp. offices compared with the offices operated by the members of the American Finance Conference which total 1,791 offices in the United States. The offices of the CIT and Commercial Credit amount to 713, making a total of 2,504 independent finance company offices in this country compared with 272 offices of GMAC.

Who do you think gives the best local service?

The CHAIRMAN. Is that a part of your statement?

Mr. CASSAT. Yes, sir.

The CHAIRMAN. We will put that in the record.

(The chart referred to follows:)

*Geographical distribution of sales finance company offices (independent and GMAC) and automobile dealer franchises, 1959-60*

State	Independent sales finance company's offices			Dealer franchises, U.S. makes, non-GM <sup>3</sup>	GMAC offices <sup>4</sup>	GM dealer franchises <sup>3</sup>	Grand total, offices	Grand total, franchises
	AFC member company's <sup>1</sup>	Others <sup>2</sup>	Total					
Alabama.....	38	16	54	371	9	268	63	639
Alaska.....				52		36		88
Arizona.....	14	4	18	172	2	107	20	279
Arkansas.....	5	20	25	276	2	218	27	494
California.....	36	28	64	1,630	18	905	82	2,535
Colorado.....	40	7	47	381	2	220	49	601
Connecticut.....	6	9	15	395	4	203	19	598
Delaware.....		2	2	56	1	46	3	102
District of Columbia.....	7	2	9	34	1	19	10	53
Florida.....	66	27	93	552	11	320	104	872
Georgia.....	80	19	99	558	11	414	110	972
Hawaii.....	2	0	2	34	1	21	3	55
Idaho.....	7	5	12	271	1	149	13	420
Illinois.....	102	26	128	1,663	11	1,109	139	2,772
Indiana.....	111	20	131	895	8	595	139	1,490
Iowa.....	49	13	62	991	5	724	67	1,715
Kansas.....	65	12	77	679	4	536	81	1,215
Kentucky.....	72	14	86	478	7	348	93	826
Louisiana.....	45	15	60	390	6	250	66	640
Maine.....		9	9	233	1	145	10	378
Maryland.....	15	13	28	367	2	183	30	550
Massachusetts.....	6	18	24	743	8	426	32	1,169
Michigan.....	56	27	83	1,328	12	868	95	2,196
Minnesota.....	22	11	33	1,020	2	701	35	1,721
Mississippi.....	18	28	46	387	9	269	55	656
Missouri.....	41	18	59	801	3	576	62	1,377
Montana.....	3	6	9	309	3	213	12	522
Nebraska.....	25	5	30	497	2	362	32	859
Nevada.....	1	2	3	69	1	40	4	109
New Hampshire.....	3	3	6	185	2	125	8	210
New Jersey.....	23	15	38	882	6	412	44	1,294
New Mexico.....	28	5	33	175	1	129	34	304
New York.....	33	41	74	2,004	19	1,080	93	3,084
North Carolina.....	90	26	116	725	9	482	125	1,207
North Dakota.....	9	5	14	356	2	238	16	594
Ohio.....	126	31	157	1,597	14	996	171	2,593
Oklahoma.....	38	13	51	505	3	446	54	951
Oregon.....	17	6	23	396	1	242	24	638
Pennsylvania.....	85	39	124	2,113	14	1,145	138	3,258
Rhode Island.....	1	2	3	114	1	56	4	170
South Carolina.....	55	12	67	259	4	207	71	466
South Dakota.....	3	2	5	345	1	208	6	553
Tennessee.....	59	14	73	439	6	290	79	729
Texas.....	127	59	186	1,679	21	1,239	207	2,918
Utah.....	14	5	19	185	1	119	20	304
Vermont.....		4	4	139	2	89	6	228
Virginia.....	26	16	42	644	3	414	45	1,058
Washington.....	4	5	9	450	4	275	13	725
West Virginia.....	5	13	18	455	6	243	24	798
Wisconsin.....	102	18	120	1,030	4	746	124	1,776
Wyoming.....	12	3	15	150	1	114	16	264
Total.....	1,791	713	2,504	30,459	272	19,566	2,776	50,025

<sup>1</sup> American Finance Conference Membership Directory, 1960.<sup>2</sup> Universal C.I.T. Credit Corp. and Commercial Credit Corp. records, 1960.<sup>3</sup> Automotive News 1960 almanac issue. (Includes repetition of multiple franchises. Net dealer figures not available by States. National net dealerships, January 1960: GM, 14,427; others, 20,602.)<sup>4</sup> GMAC Annual Report for 1959.

NOTE.—Sales finance offices not handling auto paper are excluded where identifiable.

Mr. CASSAT. The chart is there.

The CHAIRMAN. What page of your statement is in the record?

Mr. CASSAT. I am told it is insert after page 10.

Mr. MEADER. It is entitled "Debt and Net Worth of Selected Sales Finance Companies." That doesn't say anything about geographical distribution.

Mr. CASSAT. There are two charts that have been put in this thing together and it is the second one of the two.

Mr. MEADER. Oh, I see it.

Mr. CASSAT. Now my next subject here is the monopoly power in borrowing and building a financial structure.

I am going to pass over this geographical distribution. I have it in there and we won't spend any time on it. It is just a little item to show the independents are better equipped with local services, with local offices, to give local services.

To go on to this monopoly power in borrowing. It is axiomatic that a sales finance company, to operate profitably or at all, must supplement its capital in substantial multiples with borrowed funds. In the early days, borrowed funds were most difficult and expensive to obtain. Banks were wary of this new "consumer credit," nearly all avoided entirely any direct participation, and only the most progressive offered lines of credit, in modest amounts, to this new type of financial intermediary. In spite of their initial inhibitions, however, commercial banks did develop into the principal supplier of the borrowed funds for sales finance companies.

The establishment of many sales finance companies and their rapid growth after World War I and the concurrent expansion of the motor vehicle industry could not have taken place as they did if sales finance companies had not qualified for sizable volume of bank loans.

This chart entitled "Debt and Net Worth of Selected Sales Finance Companies" which was misplaced in your document there, sets out the structure of liabilities of selected sales finance companies covering the prewar period of 1924 to 1939 taken from the study of Wilbur Plummer and Ralph A. Young, "Sales Finance Companies and Their Credit Practices," published by the National Bureau of Economic Research, New York.

(The chart referred to is as follows:)

*Debt and net worth of selected sales finance companies, 1924-39, in percent of total liabilities or of total assets*

	National companies			Regional companies			Local companies		
	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)
1924	68.1	-----	22.9	52.8	-----	36.9	52.7	-----	33.0
1925	68.1	2.3	21.1	54.8	10.5	25.4	60.3	1.1	27.9
1926	61.5	11.5	18.6	45.3	18.3	26.5	59.0	.9	27.0
1927	49.0	22.0	20.5	43.6	15.0	31.9	56.6	-----	32.2
1928	53.6	16.3	20.4	50.6	18.7	31.0	50.3	-----	31.6
1929	50.5	13.3	25.8	42.4	9.1	38.8	57.8	1.0	31.6
1930	43.7	13.4	29.8	33.3	13.7	50.6	52.1	1.2	37.2
1931	40.6	14.3	33.8	35.5	8.8	38.6	55.5	.9	39.7
1932	14.7	18.2	52.6	20.3	9.7	55.9	38.4	1.3	51.6
1933	35.5	7.9	41.6	33.0	5.9	47.6	50.9	.8	46.5
1934	46.1	4.7	33.6	41.1	3.6	40.0	51.9	.6	38.6
1935	51.1	5.0	27.8	55.0	1.9	30.6	61.3	.5	29.2
1936	45.3	17.7	20.4	51.7	8.0	28.5	60.5	2.6	27.9
1937	52.5	17.9	18.3	56.1	6.8	26.5	62.6	1.5	27.7
1938	33.8	23.9	27.8	39.3	9.8	40.3	52.4	1.7	38.6
1939	41.5	16.9	23.6	38.9	5.1	37.8	57.2	5.1	32.2

<sup>1</sup> Based on data for 4 companies only.

NOTE.—Data for 1924-33 obtained from National Credit Office, Inc., on companies using commercial paper; data for 1934-39 direct from companies. Percentages do not add to 100; the difference represents corporate reserves. Composition of groups: National companies—General Motors Acceptance Corp., Commercial Investment Trust, Inc., and Commercial Credit Co. for all years, Universal Credit Corp. from 1928; regional companies—Associates Investment Co., National Bond and Investment Co., Pacific Finance Corp. of California for all years, Maytag Acceptance Corp. from 1927; local companies—sample of 13 for 1924-33, of 40 for 1934-38 and of 24 for 1939.

Source: Wilbur C. Plummer and Ralph A. Young, "Sales Finance Companies and Their Credit Practices," National Bureau of Economic Research, New York, 1940, p. 62.

Mr. CASSAT. Particular attention is directed to the conservative "leverage" on equity funds. Leverage is the ratio of borrowings to capital funds—a "yardstick" developed by bank creditors. Equity funds during the period, except for isolated cases, consisted wholly of the capital stock and surplus of the companies; subordinated and junior subordinated debentures were not as yet elements of debt, nor of "capital funds."

Subordinated debentures were first publicly sold by one of the independent finance companies that formed the American Finance Conference in March 1936. After the war, this type of security became widely accepted and changed the structure of finance companies materially.

The largest post-war costs that had to be absorbed were the increased taxes and, in the problem of preserving the low prevailing rates of finance charges to dealers and their customers, these new subordinated debentures proved to be an important tool.

(1) Since it was subordinate to all other senior borrowings, in order of liquidation priority, it combined with the capital net worth of the company to broaden the "capital base," or "borrowing base," upon which to "construct" senior debt. This broadened borrowing base soon became generally accepted by both senior long-term and short-term creditors as equal to the former borrowing base of strictly orthodox liquid net worth, or equity funds.

(2) Since subordinated debt qualified as debt because of its definite maturities, the interest paid on subordinate debentures was an ex-

pense deductible for Federal income tax purposes, as dividends on capital were not.

It followed, therefore, that those companies which could pyramid the greatest extension of debt structure could enjoy competitive advantages denied to those less fortunate, especially because of the tax disadvantage.

The effect of debt leverage on items of cost can be simply illustrated. In the following illustrations, a profit objective of 20 percent return, after Federal income tax, on common equity for average outstanding receivables is assumed, and interest cost of 4 percent is assumed.

There is an asterisk there. The reason we took these is because General Motors Acceptance Corp. average return for 1954-59 was 20.4 percent, for 5 years they earned 20 percent, on common net worth after tax which corresponds to General Motors target profit of 20 percent but is markedly higher than other finance companies return. Interest costs of GMAC for 1957 were 3.85 percent. We rounded these out and used them here, since GMAC is strictly a sales finance company and has no loan paper in its portfolio.

Operating costs, because leverage does not affect them, are omitted from consideration to simplify the illustrations.

Now, in this first chart a company operating without any debt would have the following cost of funds charges to pass on to its customers.

It would pass 20 percent profit and 21.67 percent income tax, and you would have to charge the customer 41.67 percent on his money per year in order to make 20 percent.

The CHAIRMAN. Isn't this what you are driving at—and it is developed very logically in the staff report of the Senate Subcommittee on Antitrust and Monopoly which says the following at page 72:

Since GMAC is able to obtain money by public borrowings on a basis of approximately \$45 of borrowed money to every \$5 of GMAC's equity because of its affiliation with General Motors, while independent finance companies have to obtain funds with which to compete on the borrowing basis of approximately \$30 to every \$5 of invested capital, it is apparent that GMAC can operate on a lower money rate of return and still make the same yield on its equity capital as any of its competitors. Money is the inventory of the finance business. The higher the borrowing ratio, the better the competitive position of the company able to obtain such ratio. It would appear from that that General Motors Acceptance Corp.'s advantage on this point is directly attributable to its affiliation with General Motors.

Mr. CASSAT. This is correct.

These only simplify—

The CHAIRMAN. That is what you are trying to drive at?

Mr. CASSAT. This merely simplifies the arithmetic.

This company is a company that didn't borrow any money it just loaned out of its own capital.

The next company is borrowing 9 to 1, nine times its equity net capital common stock. Nine units at 4 percent, the interest would be \$36.

They want a profit of 20 percent. It takes 21.67 percent to pay the income tax on the earnings.

So your 10 units cost 77.67, or per unit \$7.76.

This per unit was \$41 that fellow had to make to make 20 percent.

The CHAIRMAN. Put those charts in the record.

Mr. MEADER. They are in the record.

Mr. CASSAT. Yes, sir; they are right on this page.



(The charts referred to are as follows:)

*Illustration 1—No debt*

	Percent
Interest on debt.....	None
Profit, after tax, on total common equity.....	20.00
Income tax at 52 percent (52/48 of 20 percent).....	21.67
Per-unit cost of funds per annum.....	41.67

Assume now the introduction of debt of nine times common equity, or a leverage of 9 to 1:

*Illustration 2—\$9 debt to \$1 capital*

	Percent
Interest on 9 units of debt at 4 percent ( $9 \times 4$ percent).....	36.00
Profit, after tax, on total common equity.....	20.00
Income tax on profit.....	21.67
Total cost of funds for 10 units (9 to 1).....	77.67
Per-unit cost of funds ( $77.67 \text{ percent} \div 10$ ).....	7.76

With a debt of 19 times common equity, or a 19-to-1 leverage, this picture emerges:

*Illustration 3—\$19 debt to \$1 capital*

	Percent
Interest on 19 units of debt at 4 percent ( $19 \times 4$ percent).....	76.00
Profit, after tax, on total common equity.....	20.00
Income tax on profit.....	21.67
Total cost of funds for 20 units (19 to 1).....	117.67
Per-unit cost of funds ( $117.67 \text{ percent} \div 20$ ).....	5.88

Thus, in illustration 1, with no debt, the per-unit cost of funds to be paid by the consumer is 41.67 percent. In illustration 2, with a 9-to-1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 7.76 percent. And in illustration 3, with a 19-to-1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 5.88 percent.

#### HOW PYRAMIDING AFFECTS RATES

Whether comparative ratios are expressed in terms of risk assets or in liabilities, they reflect an increasing competitive advantage in the range of rates than can be offered as the pyramid grows higher.

The competitive advantage of pyramiding appears more clearly by elaboration of the 19-to-1 and 9-to-1 examples previously cited and the addition of a 4-to-1 ratio, to represent small companies. The 19-to-1 ratio is double (plus 1) the 9 to 1, and the latter in turn holds a comparable advantage over the 4 to 1. The following shows how this advantage makes a difference in spreading the cost of profit and income tax in the rate charged.

#### FOUR-TO-ONE RATIO

Profit : 20 percent, five units of funds : 4 percent per unit of funds.

Tax : 21.67 percent, five units of funds : 4.33 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 8.33 percent per annum.

#### NINE-TO-ONE RATIO

Profit : 20 percent, 10 units of funds : 2 percent per unit of funds.

Tax : 21.67 percent, 10 units of funds : 2.16 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 4.16 percent per annum.

#### NINETEEN-TO-ONE RATIO

Profit : 20 percent, 20 units of funds : 1 percent per unit of funds.

Tax : 21.67 percent, 20 units of funds : 1.08 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 2.08 percent per annum.

Favorable per annum differential over 9-to-1 company, 2.08 percent.

Favorable per annum differential over 4-to-1 company, 6.25 percent.

Mr. CASSAT. This is complex but it is absolutely correct.

Now, here is your comparison. Company A, 41.67; B, 7.76; C, 5.88. That is the comparison of what the rate per unit cost is to get 20 percent profit.

Now, here is your 60 dollars per car, Mr. Maletz, here is your \$60 per car that Mr. Yntema was talking about. It is all in the borrowing power, every bit of it.

Now, we cut down to 15 to 1, not 19 to 1, 15 to 1. The interest cost is 36; earnings 33.85, total 167.44.

The same cost to produce the same profit in the other company is 28.26, the difference is \$60 and this is what Mr. Yntema was talking about.

Mr. MALETZ. Mr. Cassat, may I interject at this point? On this entire question of leverage, may I direct your attention to a statement submitted for the record in the hearings of the Senate Antitrust Subcommittee at page 455 and I am quoting, from General Motors statement:

An attempt has been made to show an advantage exists by reason of the fact that so long as GMAC is owned by General Motors it can borrow up to 200 percent of its equity capital through issuing subordinated notes but only 133 percent in the absence of GM ownership. However, at the end of 1958, the amount of GMAC's subordinated indebtedness in relation to its equity capital was 192 percent. CIT has the right to borrow 125 percent in the form of subordinated indebtedness, but at the end of 1958 its outstanding subordinated indebtedness was only 79 percent of its equity capital. Thus the witness' own company, CIT, can if it wishes approximate the existing GMAC relationship between subordinated notes and equity capital. There is no basis for the contention that GMAC is obtaining any financial advantage.

Let me have your comments on that?

Mr. CASSAT. I would like to comment on that as follows: On page 16—

Mr. MALETZ. Did I anticipate your statement?

Mr. CASSAT. Yes. You are just a page ahead of me.

Thus it can be noted that leverage gives the 19 to 1 company a cost advantage over the 9 to 1 company about equal to the latter company's tax cost—producing a competitive position for the 19 to 1 company equivalent to income tax exemption, and a far greater differential over the 4 to 1 company.

Leverage has always been an important tool of financial management, but since World War II and the imposition of the 52 percent income tax rate, it has become competitively decisive in the time sales financing business.

It may be stated unequivocally that primary credit institutions, such as commercial banks and life insurance companies, to the extent that they waive or diminish for a special type of finance company the standards applied to all other such companies, can and do change the flow of funds and of business—not only among finance companies, but between auto manufacturers who own captive companies and those who do not.

The power of the ownership of GMAC by GM is nowhere better illustrated than in the borrowing of its funds. This power can be

clearly engraved on your memories by simply reciting the fact that GM has tremendous bank balances in many of the banks of our country and, by reason of those balances, has great borrowing power. I have elided an officer of one of the largest banks in this country as to why he did not enforce the same borrowing ratios and capital requirements on GMAC that he does on other finance companies, some of them very large. His reply was to simply shrug his shoulders and ask, "what would you do if the customer was merely borrowing the money that was already on deposit from his owner?"

The CHAIRMAN. In other words, if there were severance from General Motors, General Motors Acceptance Corp. in its borrowing would not be at the great, great advantage over all other borrowers that it is now, is that correct?

Mr. CASSAT. Absolutely not.

They are bigger than the Federal Reserve Board.

The CHAIRMAN. And under loan agreements GMAC borrows heavily from the insurance companies, because I notice on page 51 of your statement in the record of the hearings before the Senate you speak of Metropolitan Life loaning GMAC \$37½ million; Prudential \$10 million; Connecticut General \$10 million; John Hancock, \$5½ million; Northwestern Mutual, \$12 million; Connecticut Mutual, \$4 million, and so on.

Then you go on to say:

In this agreement to answer this question which has been very popular asked and which every one of you ought to be interested in, here is a paragraph which I think you ought to listen to very carefully: "The company covenants that so long as any of those notes shall remain outstanding, it will at all times maintain the aggregate of the capital and surplus of the company and its consolidated subsidiaries determined on a consolidated basis, and in accordance with generally accepted accounting principles and practices, at an amount at least equal to 100 percent of the aggregate amount then outstanding of the notes on other senior subordinated indebtedness of the company; or, No. 2, in the event that General Motors Corp. shall have ceased to be the owner of substantially all of the capital stock of the company"—

and you interpolate—

"these insurance companies then look far ahead, they can tell which way the wind is blowing. In the event that General Motors shall have ceased to be the owner of substantially all of the capital stock of the company otherwise than as a result of a merger or consolidation of the company into or with General Motors Corp., or of the dissolution or winding up of the company made in connection with the sale or other disposal of the General Motors Corp. of all or substantially all of its assets not prohibited by paragraph 6 of this agreement, then 150 percent of the aggregate amount then outstanding of the notes and other senior subordinated indebtedness of the company"—

And you go on to say:

In other words, if they have got \$100 million here in capital, then they can borrow \$100 million in subordinated notes.

But if they lost their ownership—

that is there is a severance—

they have to put up 150 percent to maintain 100.

Mr. CASSAT. That is right.

The CHAIRMAN. "Increase it 50 percent to maintain the capital" and that is right in their agreement.

Have you got a copy of that agreement and could we place that in the record?

**Mr. CASSAT.** That agreement is in this record. It is in the appendix. The **CHAIRMAN.** All right. We will refer to it.

**Mr. CASSAT.** Yes, sir.

Now, on page 17 I sum this up in another way.

GMAC's capital subsidy from GM is an exclusive privilege which allows it to be substantially undercapitalized simply because it is owned by GM. Such privileges have been formalized in writing in indenture agreements between GMAC and a number of the large life insurance companies and other institutional lenders. These agreements specifically require more capital for GMAC if GM ownership is ended. A complete text of these indentures is available in various places. One of them was furnished to the Senate Antitrust and Monopoly Subcommittee in 1959; but perhaps the best way to describe them would be to take the description given by General Motors, which relates as follows:

In accordance with the provisions of its indentures, GMAC may borrow presently up to 100 percent of the amount of its capital stock and surplus in senior subordinated indebtedness as well as 100 percent in junior subordinated indebtedness: i.e., the equivalent of 200 percent of its capital stock and surplus \* \* \* studies reveal that larger finance companies are limited to a ratio of 125 percent or even 100 percent. (Note: Lesser sized companies have lower limits.)

\* \* \* as long as GMAC is owned by General Motors, it can borrow up to 200 percent of its equity capital through issuing subordinated notes but only 133 percent in the absence of GM ownership \* \* \*

Thus, GMAC has the exclusive privilege, which it exploits fully, of having a capital investment of one-half or less of the common capital required for a conventional sales finance company. The extent to which the indenture agreements and other exclusive concessions by lenders has permitted GMAC to borrow funds, not on its own capital but on the strength and excess capital of GM, is illustrated by the negligible amount of GMAC common net worth to total assets in 1955, when it reached a low of 4.85 percent of total assets or a borrowing ratio of about 21 to 1 of common. By contrast, national banks, when their risk assets reach 6 or 7 to 1 of net worth are asked by the controller of the currency to increase their net worth.

On the next page I show you a debt and net worth captive company, GMAC in the first four columns, and then the four largest independent sales finance companies for the years 1948 to 1958.

This shows the total liabilities of GMAC, the net worth in millions, and the percentage, and this shows that where in 1948 they had 15 percent, their net worth was 15 percent of their total liabilities, it went steadily down to where it got down to 6 percent in 1953, and it stayed about at that level ever since.

Now, the four largest independent sales finance companies and let me say they are not small, CIT and Commercial Credit are giant companies, billions of dollars of business and of assets, their total liabilities went up from 1948 to 1958 from \$1.9 billion to \$4,754 million. Their net worth went up from 303 to 712. Their net worth percent of total liabilities stayed almost where it was, 16, 15.9, 15.4. It got down so low as 13.3 in 1953 and down to 11.8 in 1955.

Everybody was stretched a little that year, but it ended in 1958 at 15 percent, double what the net worth percent of total liabilities of GMAC is.

The ratio of the four independent companies net worth percentage to captive companies net worth percentage in 1958 was 1.97 times. These are from the GMAC reports, John H. Chapman and Frederick Jones in their book "Finance Companies."

"How and Where They Obtained Their Funds" from the Graduate School of Business, Columbia University.

Now below we find the captive sales finance company and its subordinated debentures compared to the four largest sales finance companies.

In the first column you find the subordinated debentures, the amount in millions, next the percent of total liabilities, and the next is the percent of net worth.

In 1954 they got up to 165.7 percent of their net worth in subordinates. It is true in 1958 they got down to 128.7, but let's look over at the four other largest ones. What were they able to do?

Well, their subordinated debentures in millions are in the first column, the second column is the percent of total liabilities, and the third is the percent of net worth, and their subordinate debentures never got above 73.4, which was in 1957 and ended up at 66.5 in 1958.

Their net worth plus subordinated debentures, that is their total capital base on their seniority debt, hangs around in that last column from 18.7 in 1958 to 25 percent in 1958, whereas GMAC is able to keep theirs as low as 17.4 and lower down to as low as 14.7.

This is conclusive when taken into consideration with these charts as to the importance of the times borrowings with the 52 percent tax. (The chart referred to follows:)

*Debt and net worth, captive company (GMAC) and four largest independents, 1948-58, amounts, and percentages of total liabilities*

[Dollars in millions]

Year	Captive sales finance company			4 largest independent sales finance companies			
	Total liabilities	Net worth	Net worth-percent of total liabilities	Total liabilities	Net worth	Net worth-percent of total liabilities	Ratio of 4 independent companies' net worth percentage to captive company's net worth percentage
1948	\$614	\$92	15.0	\$1,900	\$303	16.0	1.07
1949	1,115	98	8.8	2,250	335	15.9	1.81
1950	1,598	139	8.8	2,556	394	15.4	1.75
1951	1,492	130	8.7	2,821	424	15.0	1.72
1952	1,802	141	7.8	3,368	449	13.4	1.72
1953	2,568	154	6.0	3,689	492	13.3	2.22
1954	2,651	166	6.3	3,295	502	15.2	2.41
1955	3,800	231	6.1	4,682	555	11.8	1.93
1956	4,033	249	6.2	4,823	603	12.5	2.07
1957	4,397	273	6.2	5,286	636	12.4	2.00
1958	3,881	285	7.6	4,754	712	15.0	1.97

Source: GMAC reports: John H. Chapman and Frederick W. Jones, "Finance Companies: How and Where They Obtain Their Funds" (Graduate School of Business, Columbia University, New York, 1959), pp. 40, 84.

NOTE.—For consistency with other tables in this discussion, net worth is related herein to total liabilities, using data from Chapman and Jones, who related net worth to total debt.

*Subordinated debentures, captive company (GMAC) and four largest independent, 1948-58, amounts, and percentages of total liabilities*

Year	Captive sales finance company				4 largest independent sales finance companies			
	Subordinated debentures			Net worth plus subordinated debentures (capital base)—percent of total liabilities	Subordinated debentures			Net worth plus subordinated debentures (capital base)—percent of total liabilities
	Amount (millions of dollars)	Percent of total liabilities	Percent of net worth		Amount (millions of dollars)	Percent of total liabilities	Percent of net worth	
1948.....	None	0	0	15.0	51.6	2.7	17.0	18.7
1949.....	75.0	6.7	76.5	15.5	132.5	5.8	37.3	21.7
1950.....	100.0	6.3	71.9	15.1	137.5	5.4	34.9	20.8
1951.....	100.0	6.7	76.9	15.4	139.0	4.9	32.8	19.9
1952.....	100.0	5.6	70.9	13.4	177.8	5.3	40.0	18.7
1953.....	245.0	9.5	159.1	15.5	238.0	6.5	48.4	19.8
1954.....	275.0	10.4	165.7	16.7	295.0	9.0	58.8	24.2
1955.....	350.0	9.2	151.5	13.3	325.8	7.0	58.7	18.8
1956.....	375.0	9.3	150.6	15.5	436.5	9.0	72.4	21.5
1957.....	375.0	8.5	137.4	14.7	481.8	9.1	73.4	21.5
1958.....	379.7	9.8	128.7	17.4	473.6	10.0	66.5	25.0

<sup>1</sup> High for period.

NOTE.—For consistency with other tables in this discussion, figures are related herein to total liabilities, using data from Chapman and Jones, who related them to total debt.

Source: GMAC reports; John H. Chapman and Frederick W. Jones, "Finance Companies: How and Where They Obtain Their Funds" (Graduate School of Business, Columbia University, New York, 1959), pp. 40, 84.

The CHAIRMAN. I notice this statement by General Motors on page 456 of the hearings in the Senate at the top of the page:

However, there is an offsetting disadvantage by reason of GMAC being a subsidiary of General Motors Corp. which must be netted against any alleged disadvantage.

This disadvantage arises from the fact that lines of credit extended by all national banks and certain State banks are made available to the corporation and its subsidiaries as a group. Thus a loan of credit—generally a maximum of 10 percent of the combined capital and surplus of the bank—is made available in total to General Motors and its associated companies as a group. For many years, General Motors Acceptance Corp. has participated in these lines of credit to the extent of 50 percent. At the present time GMAC would qualify for an additional \$255 million of credit from the banks referred to above if it were not a subsidiary of General Motors Corp.

What is your comment on that?

Mr. CASSAT. They don't use their bank lines anyhow, Mr. Chairman.

The CHAIRMAN. What is that?

Mr. CASSAT. They don't use their bank lines anyhow.

They don't have to pay that kind of a rate for borrowed money. They get all their money in the open market. They even sell their own notes so the broker can't make anything on it. They "can the squeal," believe me.

The CHAIRMAN. Is that statement inaccurate?

Mr. CASSAT. It would be if they were using their bank loans but they aren't. They are just set up for them if they want to, but why are they going to pay 4½ percent, which is the prime rate on a bank borrowing when they can borrow on the open market at 3 percent?

Now these same banks will require me—here is the difference—these same banks will require me to have 100 percent or more available bank lines for every note I sell in the open market. But GMAC doesn't cover their open market operations with bank loans at all, and the banks are powerless to insist on it.

At the end of 1959 Dr. Rogers points out to me that 3.16 percent of their borrowed money was from commercial banks—3 percent. The highest use they show here in any of the 8 years preceding and including 1959, is 30 percent. Our banks won't let us do that, have that kind of operation, but they are powerless to require it from them. Their compensating balance are usually about 5 percent of their bank loans, while ours are required to be 15. And their compensating balances are that low because they get a tremendous advantage which they don't mention in this paragraph, Mr. Chairman.

In this paragraph where they say they have a disadvantage, they don't mention the fact that GM—they use GM deposits for their compensating balance in GMAC.

The CHAIRMAN. Mr. Cassat, I am going to ask you now to conclude your testimony.

Mr. CASSAT. Yes, sir.

#### LOWER WHOLESALE FINANCING COSTS

GM dealers have lower costs through low GMAC wholesale financing rates. Critics described these rates as subsidized, based on evidence that they are below GMAC's cost. In any event, GMAC rates were one-half of 1 percent or 1 percent below those of the largest independent competitor for 55 months of the 73-month period (January 1, 1952–February 2, 1959) covered in a GM statement to the Senate—or about 75 percent of the time.

Ford considered GMAC wholesale rates as subsidized, actually or potentially, in its 1946 petition to the Supreme Court, wherein it referred to this competitive disadvantage:

Nor is it [Ford] in a position to absorb the entire cost of floor planning new cars and trucks for its dealers while General Motors Corp., through General Motors Acceptance Corp., can do so.

A noteworthy instance of GMAC's apparent use of below-cost wholesale financing as an auto sales weapon is to be seen in the period leading up to and into the record sales year of 1955. For most of 1953 the company's wholesale rate was 5 percent, or a 1.69 percent differential over GMAC's average interest costs of 3.31 percent that year, according to figures it filed with the Senate.<sup>1</sup> By 1955 the wholesale rate had dropped by stages to 3.5 percent, whereas GMAC's average interest cost for that year was 3.22 percent.

Thus, the wholesale rate was pushed down 1.5 percent in 2 years, while the company's costs in interest rates were reduced only 0.09 percent. The slight spread of 0.28 percent between interest cost and wholesale rate, which prevailed most of 1955, could not have begun to offset the company's operating costs in providing the credit, conclude independent sales finance company observers. They point out that regular physical verification of floor-plan vehicles is costly, and they question that GM's description of GMAC wholesale business as "profit-

<sup>1</sup> Senate hearings of 1959, op. cit., pp. 448, 456.

able," as stated to the Senate in 1959, could have applied to that of 1955 in particular, or of other years when the margin was greater.

In contrast to GMAC's interest cost—wholesale rate margin of 0.28 percent, the largest independent finance company had a 1.26 percent margin in effect in 1955 (and 2 percent or more for most of the 1952-57 period). In view of the traditional importance of wholesale credit in procuring retail business and the intense competition among independents, it would seem implausible that the largest independent would overprice its wholesale credit, in competition against either GMAC or other companies.

The actual saving to a GM dealer benefiting from a one-half of 1 percent lower wholesale rate and lower flat charge per car for insurance would amount to \$2.50 a car comparing GMAC's terms and those of a major competitor, the Ford spokesman told the Senate subcommittee in 1959.

Such a difference is significant, considering the narrow profit margins on which dealers operate. According to the National Automobile Dealers Association, all dealers' net operating profit per new car sold in 1960 averaged \$22, or only one-half of 1 percent, before Federal income taxes. These figures include finance reserves.

Early in 1959, shortly after divestiture bills were introduced in the Senate, GMAC raised its wholesale rate to meet the prevailing industry rate—but it had maintained a lower-than-industry rate continuously from late 1954 into 1959, except for a 10-day interval. GMAC's flat rate charge still held in 1959 at an estimated \$1 per car below others prevailing.

#### GM DEALER HAS FIVE POCKETS OF INCOME

The GM dealer receives five incomes controlled by GM and its subsidiaries, an exclusive General Motors privilege. They are (1) the markup on the new car—

this is not exclusive; every dealer gets that from the factory—

(2) the normal reserve for losses on time sales set up on the books of GMAC, (3) the overage or pack charged to time buyers when the charges reach or approach the maximum set by law, and such overage is then credited to or paid to the dealer by GMAC, (4) the commission paid auto dealers on insurance included and paid for in the time sale contract, (5) the income, so long as the dealer remains a GM dealer, from the repairs and parts replacement under losses under such policies.

Under the GM mobility-of-subsidy plan—

or the shell game, as I prefer to call it—

all these incomes are under GM control and passed on to the dealer from GM or its subsidiaries. With an understanding of this, it becomes clear why GMAC with all its freak advantages of leverage, low money costs, and practically no acquisition cost, permit high charges to the public.

The maximum rates simply generate the overages or packs paid by the time buyers. GMAC then becomes the source of this pocket of income for the dealers. This along with the other four pocketbooks enables GM to control and hold the GM dealers from going to other manufacturers.

These same pockets, Mr. Chairman, have fish hooks in them. Once the dealer gets his hand into those, he is stuck.

It practically eliminates dealer turnover from GM to other manufacturers and attracts the best dealers from the other manufacturers.<sup>1</sup>

<sup>1</sup> Auto financing legislation, Senate hearings, 1959, pp. 303, 304.



Besides being tied to a single source for all five sources of income, the dealer is further kept under the factory's control by the delayed nature of two of the five sources. The same witness explained (p. 305):

The dealer has two immediate incomes—the markup on the car and the commission on the insurance—and two delayed incomes—the profitable reserve on the books and in the possession of GMAC, and the profits he will make on repairing cars under insurance losses on policies he has written with the GMAC insurance subsidiary.

It doesn't take any great imagination to see that such a dealer would hesitate to switch franchises to a Ford or Chrysler product, or back in the days of Kaiser-Frazier, to their franchise.

This dealer would have to trust a finance company belonging to an unfriendly manufacturer to collect his accounts well in order that no unusual losses would occur so that the direct profits from the reserves would come to him in the amount that he expected in the beginning. This dealer knows that the delayed income on the repairs to cars under losses on the insurance policies would certainly not go to him but instead to the dealer who succeeded him in the General Motors franchise.

If GM and GMAC were divorced and other auto manufacturers likewise forbidden to own finance companies, the factory would control only one of the dealer's "five pocketbooks of income"—the sale of the car—proponents of such action point out.

This would put all manufacturers, present and future, on the same footing.

GM dealers could continue to get the four other pockets of income from an independent GMAC, without any factory pressures from this source on inventory loading.

Dealers of other makes could use the same services. And all dealers could use the services of other independent finance companies and other institutions, according to their free choice.

Mr. Chairman, may I beg your indulgence for one more word?

The CHAIRMAN. It is now almost 20 minutes after 5. We have been at this since 10 o'clock this morning. Other members and I have neglected a tremendous amount of officework, so it will have to be very brief.

Mr. CASSAT. So 1 minute won't hurt.

Gentlemen of the committee, I would digress from my manuscript to make this statement. You have probably noticed in the papers that recently GM has been indicted by a Federal grand jury for alleged illegal practices in the manufacture and sale of diesel locomotives. It is interesting to note in this connection that Baldwin-Lima Locomotive and Fairbanks Morse, who were very active in this field some years ago, no longer manufacture any diesel locomotives. They could not compete against GM. They were driven from this field.

Now, I would like to say to you, gentlemen of this committee, that these manufacturers were undoubtedly like my company. They did not need to depend on that one line. They went into other fields of useful endeavor and so will we—but a few years from now someone will suddenly discover that two or three factory-owned finance companies have 85 or 90 percent of the business and they are not handling it in a benevolent fashion; then they will move to correct this situation, after the independents are all gone.

Only you gentlemen who establish policy, write the rulebook for American free enterprise, can decide what you feel is the best thing for the country.

When there are no diesel locomotives except GM, no earthmoving equipment except Euclid, no buses except GM, no cars except GM, no airplane engines except GM, will you then feel your policies have been best for the country?

Certainly, they will have been best for GM; but this would not be a free enterprise system working in a free marketplace.

Thank you very much.

(Mr. Cassat's prepared statement follows:)

Mr. Chairman and gentlemen, members of the Judiciary Committee of the House of Representatives, my name is David B. Cassat, and I am appearing before you today representing the American Finance Conference and my own company, the Interstate Finance Corp. of Dubuque, Iowa. I wish to testify in favor of H.R. 71 because it will cure an intolerable situation of monopoly which has been built up by General Motors and GMAC in the last 35 years.

Mr. Chairman, there seems to be a widespread feeling that GMAC is sort of a "holy cow;" that nothing must be done to harm this giant because it performs a service in its field better than anyone else. Now, I propose to you, gentlemen, that H.R. 71 will make the services of GMAC available to all car manufacturers, automobile dealers, and purchasers of automobiles regardless of make and, if their service is better than that of anyone else, then this bill will achieve a great benefaction to the automobile industry and to the economy of this country. Why should their remarkably excellent services, so highly regarded by the thoughtless, be available only to the favored few. I say to you, Mr. Chairman, that I invite—for myself and for all of the independents—I invite GMAC to come out from behind the skirts of her paternal benefactor and fight for this finance business in a free and competitive market in the United States and let's see how good they are. If they are so important and so perfect, why are they not willing to give up all of the monopolistic and illegal practices which made them what they are today and compete on an equal basis with little people like my company? I say illegal practices because they have been convicted criminally in the Federal courts of this country of these illegal practices. I want to remind you, these people owe the advantage they have in this market to the criminal practices in which they have indulged, while, over the years, they have shrouded themselves in an aura of respectability, which is nowhere supported by the records of the court case or the facts of life in the automobile finance world. Their domination in this field has come from using their crushing size and power to destroy others and to gain favors for themselves in the financial marketplace and elsewhere.

If they are so good, Mr. Chairman, on behalf of all of the independent finance companies and all of the banks who handle this business in their local communities cheaper and better than GMAC does, I invite GMAC to divest itself of all of its monopolistic power and serve the American marketplace complete.

#### GMAC'S DOMINANCE OF THE AUTOMOBILE SALES FINANCE MARKET

It is only through a long history of legal actions that we come to your committee today, supporting H.R. 71, because normally you would expect the anti-monopoly laws of the United States to be enforced by the Department of Justice and to eliminate such situations as are clearly evident in the automobile finance picture. Going back to the 1930's, when nearly 100 percent of all automobile retail conditional sales contracts were sold by the dealers to finance companies, there were three so-called national companies: GMAC, owned by General Motors, Universal CIT, and Commercial Credit Trust. Each of these three national companies had a contractual relationship with a factory or complete ownership in the case of GMAC. They were purported to control 75 percent of the business and about 1,500 independents controlled the other 25 percent.

In 1936, when I was president of the American Finance Conference, a committee presented the facts in the automobile finance world to the Department of Justice with the result that an investigation was authorized. A grand jury indicted all of the three manufacturers and the three national companies. The

evidence was overwhelming and Chrysler and Ford with their finance companies, Commercial Credit and CIT, signed consent decrees agreeing to non-discriminatory treatment of finance companies and to no factory affiliation with any finance company, except that the decrees provided that GM was to be divested of GMAC. GM stood trial on its indictment and was convicted by a jury in 1949. The conviction was appealed and upheld by the circuit court and the Supreme Court refused to review the decision.

The Government filed a civil suit in 1940 seeking divestiture but trial of the suit was delayed through tactics well known to most attorneys: war intervened and when a consent decree was negotiated, effective in 1952, the Government settled for nondiscriminatory agreements but no divestiture. The reason given for the consent decree was to avoid the time and trouble of a lawsuit. No one has ever been able to understand why such a consent decree was agreed upon by the Government. Divestiture is the only remedy to assure free competition in the automobile finance industry.

In 1959, appearing before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, former Assistant Attorney General Thurman Arnold, summed up the legal situation as follows, and I quote from the hearings on auto financing legislation, page 265; and remember, please, now, that this is a former Assistant Attorney General speaking:

"1. In my view the combination between General Motors and General Motors Acceptance Corp. violates every principle and policy embodied in the Sherman Act and particularly section 7 of the Clayton Act.

"2. Were it not for the procedural obstacle that has developed due to the action of the Department of Justice in entering the decree in 1952, the suit could be successfully prosecuted.

"3. Nevertheless, in spite of the illegality of the manufacturer-finance combinations which are before this committee, the Government has itself in a procedural trap by virtue of the consent decrees of 1952 which make General Motors immune from prosecution. These decrees are res adjudicata. They cannot now be altered. Legislation is required to make General Motors, Ford, and Chrysler subject to the same laws as apply to other American corporations. This is not as is charged, special legislation to treat the automobile companies differently from other industries. It is rather legislation by which GMAC-GM combination is to become subject to the same law as the GM-Du Pont combination which has recently been declared illegal."

Now, what has happened since the consent decree? It didn't take it long to happen because there was testimony offered in the 1959 hearings, previously quoted, that GMAC extends more than 80 percent of the automobile installment credit extended by all sales finance companies on cars manufactured by GM. Now, that is what an independent finance company witness claimed. What did General Motors claim? They filed a statement which said that GMAC financed 46 percent and other finance companies 7 percent of all GM cars bought on credit in 1957 with a breakdown of 41 percent and 7 percent for 1958. These relative strengths within the sales finance company business convert to 87 percent for GMAC and 13 percent for independents in 1957 and 85 percent and 15 percent in 1958. These figures eliminate the direct loans which automobile buyers arrange for themselves with credit unions, banks, etc., and which dealers do not handle as well as purchases of dealer installment paper by banks and other agencies which, though competing for dealer patronage, are a different kind of financial institution and they make no attempt whatever to finance the industry. In 1941, contrasting the figure of 1957 and 1958, GMAC handled less than 47 percent of GM retail paper bought by finance companies.

#### GMAC GROWTH SINCE 1952 CONSENT DECREE

The penetration of GMAC in its share of total sales finance company into retail volume rose from 28.44 percent in 1952—the year of that company's consent decree—to 40.86 percent in 1957, it was shown in data submitted by the American Finance Conference.<sup>1</sup>

GMAC's share of this market grew faster than GM's share of total car registrations over the 5-year period, and even rose in 1957, when GM's relative business volume dropped. With 1952 as an index of 100, GMAC's penetration in 1957 was 143.7, while GM's was 107.5.

<sup>1</sup> Senate hearings, 1959, op. cit., p. 459; *ibid.*, p. 482.

The AFC study was based on Federal Reserve Board statistics on extensions by sales finance companies on new and used passenger cars and commercial vehicles, with GMAC volume based on AFC estimates derived from GMAC annual reports and registration statements.

GMAC filed with the Senate subcommittee a different set of figures on its share of the total sales finance company market, but when these are converted to index figures, the penetration pattern corresponds to the one prepared by the AFC. For example, the GMAC derived index figure for 1957 (1952=100) is 146.8, as against 143.7 in the AFC study.

GMAC, with exclusive access to actual figures on its own extensions, limited them to automobiles (excluding commercial vehicles). These were related to Federal Reserve Board reports of total sales finance company extensions, again limited to autos. How the same GMAC penetration pattern emerges, whichever set of data is used, is illustrated in the following composite table. It embraces both AFC and GMAC figures,<sup>2</sup> with an index column added to the latter.

*GMAC and GM market penetration, percentages, indexes*

Year	GMAC (AFC study)		GMAC (GMAC study)		GM (AFC study)	
	Percent of all sales, finance companies automobile extensions	Index: 1952=100	Percent of all sales, finance companies automobile extensions	Index: 1952=100	Percent of industry new-car registrations	Index: 1952=100
1950.....	29.43	103.5	28.7	108.3	45.38	108.7
1951.....	28.35	99.7	26.9	101.5	42.83	102.6
1952.....	28.44	100.0	26.5	100.0	41.74	100.0
1953.....	35.12	123.5	33.4	126.0	45.07	108.0
1954.....	38.16	134.2	35.7	134.7	50.70	121.5
1955.....	38.52	135.4	37.3	140.8	50.76	121.6
1956.....	40.29	141.7	38.8	146.4	50.78	121.7
1957.....	40.86	143.7	38.9	146.8	44.55	107.5

Source: Federal Reserve Board G. 20 releases, and AFC and GMAC estimates of breakdowns; R. L. Polk & Co. registration reports on new cars.

The volume of retail business for these years shows a pattern of growth for both GMAC and independents. But the disparity recurs, this time in the rate of growth. GMAC's retail automobile extensions in 1957 were 205.7 percent of its own volume for 1952, whereas independents' retail auto volume in 1957 was only 116.5 percent of their own volume for 1952. In the poor auto sales year of 1958, GMAC's volume fell off, but still was 161.1 percent of its 1952 figure, while independents slipped below their 1952 volume, to 92.4 percent.

*Relative growths of auto volume, GMAC and independents, 1950-58, amounts of retail extensions, compared to 1952 levels*

[Dollars in thousands]

Year	Total sales finance companies	GMAC	Percent of own 1952 volume	Independents	Percent of own 1952 volume
1950.....	\$4,096,000	\$1,175,600	82.6	\$2,920,400	74.0
1951.....	4,277,000	1,150,600	80.8	3,126,400	79.2
1952.....	5,368,000	1,422,600	100.0	3,945,400	100.0
1953.....	5,971,000	1,994,300	140.1	3,976,700	100.7
1954.....	5,648,000	2,016,300	141.7	3,631,700	92.0
1955.....	8,239,000	3,073,100	216.0	5,165,900	130.9
1956.....	7,317,000	2,850,600	200.3	4,466,400	113.9
1957.....	7,526,000	2,927,400	205.7	4,598,600	116.5
1958.....	5,941,000	2,293,200	161.1	3,647,800	92.4

Source: Federal Reserve Board G.20 releases for industry totals; GMAC reports on percentages to Senate Antitrust and Monopoly Subcommittee, 1959, for breakdowns.

<sup>2</sup> Senate hearings, 1959, op. cit., p. 452.

A significant contrast of the opportunities for independent sales finance companies in the GM market and the Ford market can be drawn from data in the Senate hearing record.

Sales finance companies provided the installment credit for about one-fourth of all new-car sales by Ford Motor Co. dealers, according to the manufacturer's spokesman.<sup>\*</sup> This 25 percent of total sales, can be translated to an estimated 58 percent of all installment contracts sold by Ford dealers, if industry averages for 1958 are applicable. (Note: This was before Ford had reentered financing.) The Federal Reserve Board estimates that 62 percent of new cars were sold on time. Assuming that the FRB's report that 70 percent of auto installment credit extensions (new and used) was dealer paper also holds for new cars alone it follows that 43.4 percent of total sales were sales involving dealer paper. Related to this figure, the 25 percent of total car sales handled by independent finance companies becomes 58 percent of the market in dealer paper. Purchases by banks and other institutions, and the few contracts held by dealers would be in the other 43 percent.

Analyzing the GM new-car market by the same approach, with the assumption that 70 percent of total auto credit was dealer paper, independents handled 10 percent of installment contracts made by GM dealers, while GMAC handled 59 percent. This leaves 31 percent for purchases by banks and others, and dealer-held paper.

Independents' 10 percent share of the GM dealers' installment paper market for new cars as against their 58 percent share of the Ford market (before Ford reentered financing) points up their heavily curtailed opportunity when competing with the factory-owned finance company.

#### GOOD SERVICE REQUIRES FACILITIES

The most striking feature of an analysis of sales finance company branch office distribution, both nationwide and by States, is the disparity between the ratio of independent finance company offices to dealers they service and of GMAC offices to GM dealers.

Nationally, independent sales finance companies have 2,504 offices to service a total of 20,602 non-General Motors new car dealers primarily; a ratio of 1 office to 8 dealers. General Motors Acceptance Corp., in contrast, has only 272 offices to service its 14,427 GM dealers; a ratio of about 1 to 53. As shown in the accompanying table, there is only 1 office of GMAC in 10 of our States. Independent companies have a total of 120 offices in those same States. In 9 other States where GMAC has only 2 offices, the independents have 205 offices.

In relating sales finance offices to dealers in particular States, the number of franchises, rather than dealerships, is the only available measuring stick.

Greatest concentration of independent sales finance company offices to dealers is in South Carolina, where there is 1 office for every 3.8 dealer-franchises; in this State, GMAC has a ratio of 1 to 52.

Greatest GMAC concentration occurs in Florida, where there is 1 office to 29 dealer franchises, and smallest is in Oregon, where a single office serves 242 franchises. In these two States, independent companies maintain 1 office for each 5.9 and 17.2 franchises, respectively.

Several conclusions may be reached as to the reasons for these wide disparities.

Unlike the independents, GMAC is operating in a noncompetitive, captive market. Because GM dealers, who are the only ones serviced by GMAC, understand that they are expected to channel all or a massive majority of their time sales contracts to the General Motors' subsidiary, that organization requires only a minimum of acquisition activity.

Another factor is that GMAC purchases these time sales contracts, in a majority of cases, on a recourse basis, placing the responsibility for defaulted payments on the dealer. Thus, the dealer in retaining a financial interest in the transaction, is used as a supplemental collection agent, substantially reducing collection activities of GMAC.

<sup>\*</sup> Senate hearings, 1959, op. cit., p. 204.

Thirdly, because of its captive market position, GMAC can limit its acceptance of time sales contracts to those which are relatively riskless, and permit GM dealers to offer less desirable contracts, with their greater servicing need, to other buyers who maintain local offices.

Analysis of its operation shows that because it operates in a monopoly market, GMAC has been able to eliminate or shift to its dealer customers many of the services which competition forces independent finance companies to supply to their dealer-customers, at considerable expense.

The accompanying chart shows the number of sales finance company offices by States and relates them to the number of franchise dealers, taken from the 1960 Almanac Issue of Automotive News.

Good service requires good facilities staffed by able people and located advantageously to serve a company's clientele.

*Debt and net worth of selected sales finance companies, 1924-39, in percent of total liabilities or of total assets*

	National companies			Regional companies			Local companies		
	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)
1924	68.1		22.9	52.8		36.9	52.7		33.0
1925	68.1	2.3	21.1	54.8	10.5	25.4	60.3	1.1	27.9
1926	61.5	11.5	18.6	45.3	18.3	26.5	59.0	.9	27.0
1927	49.0	22.0	20.5	43.6	15.0	31.9	56.6		32.2
1928	53.6	16.3	20.4	50.6	18.7	31.0	50.3		31.6
1929	50.5	13.3	25.8	42.4	9.1	38.8	57.8	1.0	31.6
1930	43.7	13.4	29.8	33.4	3.7	50.6	52.1	1.2	37.2
1931	40.6	14.3	33.8	35.5	8.8	38.6	55.5	.9	30.7
1932	14.7	18.2	52.6	20.3	9.7	55.9	38.4	1.3	51.6
1933	35.5	7.9	41.6	33.0	5.9	47.6	50.9	.8	46.5
1934	46.1	4.7	33.6	41.1	3.6	40.0	51.9	.6	38.6
1935	51.1	5.0	27.8	55.0	1.9	30.6	61.3	.5	29.2
1936	45.3	17.7	20.4	51.7	8.0	28.5	60.5	2.6	27.9
1937	52.5	17.9	18.3	56.1	6.8	26.5	62.6	1.5	27.7
1938	33.8	26.9	27.8	39.3	9.8	40.3	52.4	1.7	38.6
1939	41.5	16.9	23.6	38.9	5.1	37.8	57.2	5.1	32.2

<sup>1</sup> Based on data for 4 companies only.

NOTE.—Data for 1924-33 obtained from National Credit Office, Inc., on companies using commercial paper; data for 1934-39 direct from companies. Percentages do not add to 100; the difference represents corporate reserves. Composition of groups: National companies—General Motors Acceptance Corp., Commercial Investment Trust, Inc., and Commercial Credit Co., for all years; Universal Credit Corp., from 1928; regional companies—Associates Investment Co., National Bond & Investment Co., Pacific Finance Corp. of California for all years, Maytag Acceptance Corp., from 1927; local companies—sample of 13 for 1924-33, of 40 for 1934-38, and of 24 for 1939.

Source: Wilbur C. Plummer and Ralph A. Young, "Sales Finance Companies and Their Credit Practices," National Bureau of Economic Research, New York, 1940, p. 62.

**Geographical distribution of sales finance company offices (independent and GMAC) and automobile dealer franchises, 1959-60**

State	Independent sales finance company's offices			Dealer franchises, U.S. makes, non-GM <sup>3</sup>	GMAC offices <sup>4</sup>	GM dealer franchises <sup>3</sup>	Grand total, offices	Grand total, franchises
	AFC member companies <sup>1</sup>	Others <sup>2</sup>	Total					
Alabama.....	38	16	54	371	9	268	63	639
Alaska.....				52		36		88
Arizona.....	14	4	18	172	2	107	20	279
Arkansas.....	5	20	25	276	2	218	27	494
California.....	36	28	64	1,630	18	905	82	2,535
Colorado.....	40	7	47	381	2	220	49	601
Connecticut.....	6	9	15	395	4	203	19	598
Delaware.....		2	2	56	1	46	3	102
District of Columbia.....	7	2	9	34	1	19	10	53
Florida.....	66	27	93	552	11	320	104	872
Georgia.....	80	19	99	558	11	414	110	972
Hawaii.....	2	0	2	34	1	21	3	55
Idaho.....	7	5	12	271	1	149	13	420
Illinois.....	102	26	128	1,663	11	1,109	139	2,772
Indiana.....	111	20	131	895	8	595	139	1,490
Iowa.....	49	13	62	991	5	724	67	1,715
Kansas.....	65	12	77	679	4	536	81	1,215
Kentucky.....	72	14	86	478	7	348	93	826
Louisiana.....	45	15	60	390	6	250	66	640
Maine.....		9	9	233	1	145	10	378
Maryland.....	15	13	28	367	2	183	30	550
Massachusetts.....	6	18	24	743	8	426	32	1,169
Michigan.....	56	27	83	1,328	12	868	95	2,196
Minnesota.....	22	11	33	1,020	2	701	35	1,721
Mississippi.....	18	28	46	387	9	269	55	656
Missouri.....	41	18	59	801	3	576	62	1,377
Montana.....	3		9	309	3	213	12	522
Nebraska.....	25	5	30	497	2	362	32	859
Nevada.....	1	2	3	69	1	40	4	109
New Hampshire.....	3	3	6	185	2	125	8	210
New Jersey.....	23	15	38	882	6	412	44	1,294
New Mexico.....	28	5	33	175	1	129	34	304
New York.....	33	41	74	2,004	19	1,080	93	3,084
North Carolina.....	90	26	116	725	9	482	125	1,207
North Dakota.....	9	5	14	356	2	238	16	594
Ohio.....	126	31	157	1,597	14	996	171	2,593
Oklahoma.....	38	13	51	505	3	446	54	951
Oregon.....	17	6	23	396	1	292	24	638
Pennsylvania.....	85	39	124	2,113	14	1,145	138	3,258
Rhode Island.....	1	2	3	114	1	56	4	170
South Carolina.....	55	12	67	259	4	207	71	466
South Dakota.....	3	2	5	345	1	208	6	553
Tennessee.....	59	14	73	439	6	290	79	729
Texas.....	127	59	186	1,679	21	1,239	207	2,918
Utah.....	14	5	19	185	1	119	20	304
Vermont.....		4	4	139	2	89	6	228
Virginia.....	26	16	42	644	3	414	45	1,058
Washington.....	4	5	9	450	4	275	13	725
West Virginia.....	5	13	18	455	6	243	24	798
Wisconsin.....	102	18	120	1,030	4	746	124	1,776
Wyoming.....	12	3	15	150	1	114	16	264
Total.....	1,791	713	2,504	30,459	272	19,566	2,776	50,025

NOTE.—Sales finance offices not handling auto paper are excluded where identifiable.

Sources:

- (1) American Finance Conference Membership Directory, 1960.
- (2) Universal C.I.T. Credit Corp. and Commercial Credit Corp. records, 1960.
- (3) Automotive News, 1960 Almanac Issue. (Includes repetition of multiple franchises. Net dealer figures not available by States. National net dealerships, January 1960: GM—14,427; others—20,602.)
- (4) GMAC annual report for 1959.

*Monopoly power in borrowing and in building a financial structure*

It is axiomatic that a sales finance company, to operate profitably or at all, must supplement its capital in substantial multiples with borrowed funds.

In the early days, borrowed funds were most difficult and expensive to obtain. Banks were wary of this new "consumer credit"; nearly all avoided entirely any direct participation, and only the most progressive offered lines of credit, in modest amounts, to this new type of financial intermediary. In spite of their initial inhibitions, however, commercial banks did develop into the principal supplier of the borrowed funds for sales finance companies.

The establishment of many sales finance companies and their rapid growth after World War I and the concurrent expansion of the motor vehicle industry could not have taken place as they did if sales finance companies had not qualified for sizable volume of bank loans.

The table on the next page sets out the structure of liabilities of selected sales finance companies covering the prewar period of 1924 to 1939, taken from the study of Wilbur C. Plummer and Ralph A. Young, "Sales Finance Companies and Their Credit Practices" (National Bureau of Economic Research, New York, 1940).

Particular attention is directed to the conservative "leverage" on equity funds. (Leverage is the ratio of borrowings to capital funds—a "yardstick" developed by bank creditors.) Equity funds during this period, except for isolated cases, consisted wholly of the capital stock and surplus of the companies; subordinated and junior subordinated debentures were not as yet elements of debt, nor of "capital funds."

*Debt and net worth of selected sales finance companies, 1924-39, in percent of total liabilities or of total assets*

	National companies			Regional companies			Local companies		
	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)	Short-term debt	Long-term debt	Net worth (equity funds)
1924-----	68.1	-----	22.9	52.8	-----	36.9	52.7	-----	33.0
1925-----	68.1	2.3	21.1	54.8	10.5	25.4	60.3	1.1	27.9
1926-----	61.5	11.5	18.6	45.3	18.3	26.5	59.0	.9	27.0
1927-----	49.0	22.0	20.5	43.6	15.0	31.9	56.6	-----	32.2
1928-----	53.6	16.3	20.4	<sup>1</sup> 50.6	<sup>1</sup> 8.7	<sup>1</sup> 31.0	60.3	-----	31.6
1929-----	50.5	13.3	25.8	42.4	9.1	38.8	57.8	1.0	31.6
1930-----	43.7	13.4	29.8	<sup>1</sup> 33.3	<sup>1</sup> 3.7	<sup>1</sup> 50.6	52.1	1.2	37.2
1931-----	40.6	14.3	33.8	35.5	8.8	38.6	55.5	.9	30.7
1932-----	14.7	18.2	52.6	20.3	9.7	55.9	38.4	1.3	51.6
1933-----	35.5	7.9	41.6	33.0	5.9	47.6	50.9	.8	46.5
1934-----	46.1	4.7	33.6	41.1	3.6	40.0	51.9	.6	38.6
1935-----	51.1	5.0	27.8	55.0	1.9	30.6	61.3	.5	29.2
1936-----	45.3	17.7	20.4	51.7	8.0	28.5	60.5	2.6	27.9
1937-----	52.5	17.9	18.3	56.1	6.8	26.5	62.6	1.5	27.7
1938-----	33.8	23.9	27.8	39.3	9.8	40.3	52.4	1.7	38.6
1939-----	41.5	16.9	23.6	38.9	5.1	37.8	57.2	5.1	32.2

<sup>1</sup> Based on data for 4 companies only.

NOTE.—Data for 1924-33 obtained from National Credit Office, Inc., on companies using commercial paper; data for 1934-39 direct from companies. Percentages do not add to 100; the difference represents corporate reserves. Composition of groups: National companies—General Motor Acceptance Corp., Commercial Investment Trust, Inc., and Commercial Credit Co. for all years, Universal Credit Corp. from 1928; regional companies—Associates Investment Co., National Bond and Investment Co., Pacific Finance Corp. of California for all years, Maytag Acceptance Corp. from 1927; local companies—sample of 13 for 1924-33, of 40 for 1934-38 and of 24 for 1939.

Source: Wilbur C. Plummer and Ralph A. Young, "Sales Finance Companies and Their Credit Practices," National Bureau of Economic Research, New York, 1940, p. 62.



Subordinated debentures were first publicly sold by one of the independent finance companies that formed the American Finance Conference in March 1936. After the war, this type of security became widely accepted and changed the structure of finance companies materially. The largest postwar costs that had to be absorbed were the increased taxes and, in the problem of preserving the low prevailing rates of finance charges to dealers and their customers, these new subordinated debentures proved to be an important tool.

(1) Since it was subordinate to all other senior borrowings, in order of liquidation priority, it combined with the capital net worth of the company to broaden the "capital case", or "borrowing base", upon which to "construct" senior debt. This broadened borrowing base soon became generally accepted by both senior long-term and short-term creditors as equal to the former borrowing base of strictly orthodox liquid net worth, or equity funds.

(2) Since subordinated debt qualified as debt because of its definite maturities, the interest paid on subordinated debentures was an expense deductible for Federal income tax purposes—as dividends on capital were not.

It followed, therefore, that those companies which could pyramid the greatest extension of debt structure could enjoy competitive advantages denied to those less fortunate, especially because of the tax disadvantage.

The effect of debt leverage on items of cost can be simply illustrated. In the following illustrations, a profit objective of 20 percent return, after Federal income tax, on common equity for average outstanding receivables is assumed, and interest cost of 4 percent is assumed.<sup>4</sup> (Operating costs, because leverage does not affect them, are omitted from consideration to simplify the illustrations.)

In the first illustration, a company operating without any debt would have the following cost-of-funds charges to pass on to its customers (plus operating costs):

*Illustration 1—No debt*

	Percent
Interest on debt.....	None
Profit, after tax, on total common equity.....	20.00
Income tax at 52 percent (52/48 of 20 percent).....	21.67
Per-unit cost of funds per annum.....	41.67

Assume now the introduction of debt of 9 times common equity, or a leverage of 9 to 1:

*Illustration 2—\$9 debt to \$1 capital*

	Percent
Interest on 9 units of debt at 4 percent (9×4 percent).....	36.00
Profit, after tax, on total common equity.....	20.00
Income tax on profit.....	21.67
Total cost of funds for 10 units (9 to 1).....	77.67
Per-unit cost of funds (77.67 percent ÷ 10).....	7.76

With a debt of 19 times common equity, or a 19-to-1 leverage, this picture emerges:

*Illustration 3—\$19 debt to \$1 capital*

	Percent
Interest on 19 units of debt at 4 percent (19×4 percent).....	76.00
Profit, after tax, on total common equity.....	20.00
Income tax on profit.....	21.67
Total cost of funds for 20 units (19 to 1).....	117.67
Per-unit cost of funds (117.67 percent ÷ 20).....	5.88

Thus, in illustration 1, with no debt, the per-unit cost of funds to be paid by the customer is 41.67 percent. In illustration 2, with a 9-to-1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 7.76 percent. And in illustration 3, with a 19-to-1 debt ratio, the per-unit cost of funds to be paid by the customer is reduced to 5.88 percent.

<sup>4</sup> General Motors Acceptance Corp.'s average return for 1954-59 was 20.4 percent on common net worth, after tax—which corresponds to General Motors' "target" profit of 20 percent, but is markedly higher than other finance companies' return. Interest costs of GMAC for 1957 were 3.85 percent; these (rounded) are used here, since GMAC is strictly a sales finance company.

*How pyramiding affects rates*

Whether comparative ratios are expressed in terms of risk assets or in liabilities, they reflect an increasing competitive advantage in the range of rates that can be offered as the pyramid grows higher.

The competitive advantage of pyramiding appears more clearly by elaboration of the 19-to-1 and 9-to-1 examples previously cited and the addition of a 4-to-1 ratio, to represent small companies. The 19-to-1 ratio is double (plus 1) the 9-to-1, and the latter in turn holds a comparable advantage over the 4-to-1. The following shows how this advantage makes a difference in spreading the cost of profit and income tax in the rate charged.

*Four-to-one ratio*

Profit: 20 percent, five units of funds; 4 percent per unit of funds.

Tax: 21.67 percent, five units of funds; 4.33 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 8.33 percent per annum.

*Nine-to-one ratio*

Profit: 20 percent, 10 units of funds; 2 percent per unit of funds.

Tax: 21.67 percent, 10 units of funds; 2.16 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 4.16 percent per annum.

*Nineteen-to-one ratio*

Profit: 20 percent, 20 units of funds; 1 percent per unit of funds.

Tax: 21.67 percent, 20 units of funds; 1.08 percent per unit of funds.

Per-unit profit-and-tax charge that must be added to interest and operating costs, 2.08 percent per annum.

Favorable per annum differential over 9-to-1 company, 2.08 percent.

Favorable per annum differential over 4-to-1 company, 6.25 percent.

Thus it can be noted that leverage gives the 19-to-1 company a cost advantage over the 9-to-1 company about equal to the latter company's tax cost—producing a competitive position for the 19-to-1 company equivalent to income tax exemption, and a far greater differential over the 4-to-1 company.

Leverage has always been an important tool of financial management, but since World War II and the imposition of the 52-percent income tax rate, it has become competitively decisive in the time sales financing business. It may be stated unequivocally that primary credit institutions, such as commercial banks and life insurance companies, to the extent that they waive or diminish for a special type of finance company the standards applied to all other such companies, can and do change the flow of funds and of business—not only among finance companies, but between auto manufacturers who own captive companies and those who do not.

The power of the ownership of GMAC by GM is nowhere better illustrated than in the borrowing of its funds. This power can be clearly engraved on your memories by simply reciting the fact that GM has tremendous bank balances in many of the banks of our country and, by reason of those balances, has great borrowing power. I have chided an officer of one of the largest banks in this country as to why he did not enforce the same borrowing ratios and capital requirements on GMAC that he does on other finance companies, some of them very large. His reply was to simply shrug his shoulders and ask, "What would you do if the customer was merely borrowing the money that was already on deposit from his owner?" He further stated that you can't require the same ratios from these people that you do from others.

GMAC's capital subsidy from GM is an exclusive privilege which allows it to be substantially undercapitalized simply because it is owned by GM. Such privileges have been formalized in writing in indenture agreements between GMAC and a number of the large life insurance companies and other institutional lenders. These agreements specifically require more capital for GMAC if GM ownership is ended. A complete text of these indentures is available in various places. One of them was furnished to the Senate Anti-trust and Monopoly Subcommittee in 1959; but perhaps the best way to describe them would be to take the description given by General Motors, which relates as follows:

"In accordance with the provisions of its indentures, GMAC may borrow presently up to 100 percent of the amount of its capital stock and surplus in senior subordinated indebtedness as well as 100 percent in junior subordinated

indebtedness; i.e., the equivalent of 200 percent of its capital stock and surplus \* \* \* studies reveal that larger finance companies are limited to a ratio of 125 percent or even 100 percent. (Note: Lesser sized companies have lower limits.)

"\* \* \* as long as GMAC is owned by General Motors, it can borrow up to 200 percent of its equity capital through issuing subordinated notes but only 133 percent in the absence of GM ownership \* \* \*."

Thus, GMAC has the exclusive privilege, which it exploits fully, of having a capital investment of one-half or less of the common capital required for a conventional sales finance company. The extent to which the indenture agreements and other exclusive concessions by lenders has permitted GMAC to borrow funds, not on its own capital but on the strength and excess capital of GM, is illustrated by the negligible amount of GMAC common net worth to total assets in 1955, when it reached a low of 4.85 percent of total assets or a borrowing ratio of almost 21 to 1 of common. By contrast, national banks, when their risk assets reach 6 or 7 to 1 of net worth are asked by the controller of the currency to increase their net worth.

*Debt and net worth, captive company (GMAC) and 4 largest independents, 1948-58—Amounts, and percentages of total liabilities*

[Dollars in millions]

Year	Captive sales finance company			4 largest independent sales finance companies			Ratio of 4 independent companies' net worth percentage to captive company's net worth percentage
	Total liabilities	Net worth	Net worth (percent of total liabilities)	Total liabilities	Net worth	Net worth (percent of total liabilities)	
1948-----	\$614	\$92	15.0	\$1,900	\$303	16.0	1.07
1949-----	1,115	98	8.8	2,250	355	15.9	1.81
1950-----	1,598	139	8.8	2,556	394	15.4	1.75
1951-----	1,492	130	8.7	2,821	424	15.0	1.72
1952-----	1,802	141	7.8	3,368	449	13.4	1.72
1953-----	2,568	154	6.0	3,689	492	13.3	2.23
1954-----	2,651	166	6.3	3,295	502	15.2	2.41
1955-----	3,800	231	6.1	4,682	555	11.8	1.93
1956-----	4,033	249	6.2	4,823	603	12.5	2.07
1957-----	4,397	273	6.2	5,286	656	12.4	2.00
1958-----	3,881	295	7.6	4,754	712	15.0	1.97

NOTE.—For consistency with other tables in this discussion, net worth is related herein to total liabilities, using data from Chapman and Jones, who related net worth to total debt.

Source: GMAC reports: John H. Chapman and Frederick W. Jones, "Finance Companies: How and Where They Obtain Their Funds" (Graduate School of Business, Columbia University, New York, 1954, pp. 40, 84.

TABLE II-16.—*Subordinated debentures, captive company (GMAC) and 4 largest independents, 1948-58—Amounts, and percentages of total liabilities*

Year	Captive sales finance company				4 largest independent sales finance companies			
	Subordinated debentures			Net worth plus subordinated debentures (capital base)—percent of total liabilities	Subordinated debentures			Net worth plus subordinated debentures (capital base)—percent of total liabilities
	Amount (millions of dollars)	Percent of total liabilities	Percent of net worth		Amount (millions of dollars)	Percent of total liabilities	Percent of net worth	
1948.....	None	0.0	0.0	15.0	51.6	2.7	17.0	18.7
1949.....	75.0	6.7	76.5	15.5	132.5	5.8	37.3	21.7
1950.....	100.0	6.3	71.9	15.1	137.5	5.4	34.9	20.8
1951.....	100.0	6.7	76.9	15.4	139.0	4.9	32.8	19.9
1952.....	100.0	5.6	70.9	13.4	177.8	5.3	40.0	18.7
1953.....	245.0	9.5	159.1	15.5	258.0	6.5	48.4	19.8
1954.....	275.0	10.4	165.7	16.7	295.0	9.0	58.8	24.2
1955.....	350.0	9.2	151.5	15.3	325.8	7.0	58.7	18.8
1956.....	375.0	9.3	150.6	15.5	436.5	9.0	72.4	21.5
1957.....	375.0	8.5	137.4	14.7	481.8	9.1	73.4	21.5
1958.....	379.7	9.8	128.7	17.4	473.6	10.0	66.5	25.0

<sup>1</sup> High for period.

NOTE.—For consistency with other tables in this discussion, figures are related herein to total liabilities, using data from Chapman and Jones, who related them to total debt.

Source: GMAC reports; John H. Chapman and Frederick W. Jones, "Finance Companies: How and Where They Obtain Their Funds" (Graduate School of Business, Columbia University, New York, 1959), pp. 40, 84.

#### LOWER WHOLESALE FINANCING COSTS

GM dealers have lower costs through low GMAC wholesale financing rates. Critics describe these rates as subsidized, based on evidence that they are below GMAC's cost. In any event, GMAC rates were one-half of 1 percent or 1 percent below those of the largest independent competitor for 55 months of the 73-month period (January 1, 1952–February 2, 1959) covered in a GM statement to the Senate—or about 75 percent of the time.

Ford considered GMAC wholesale rates as subsidized, actually or potentially, in its 1946 petition to the Supreme Court, wherein it referred to this competitive disadvantage:

"Nor is it [Ford] in a position to absorb the entire cost of floor planning new cars and trucks for its dealers while General Motors Corp., through General Motors Acceptance Corp., can do so."

A noteworthy instance of GMAC's apparent use of below-cost wholesale financing as an auto sales weapon is to be seen in the period leading up to and into the record sales year of 1955. For most of 1953 the company's wholesale rate was 5 percent, or a 1.69-percent differential over GMAC's average interest costs of 3.31 percent that year, according to figures it filed with the Senate.<sup>5</sup> By 1955 the wholesale rate had dropped by stages to 3.5 percent, whereas GMAC's average interest cost for that year was 3.22 percent.

Thus, the wholesale rate was pushed down 1.5 percent in 2 years, while the company's costs in interest rates were reduced only 0.09 percent. The slight spread of 0.28 percent between interest cost and wholesale rate, which prevailed most of 1955, could not have begun to offset the company's operating costs in providing the credit, conclude independent sales finance company observers. They point out that regular physical verification of floor-plan vehicles is costly, and they question that GM's description of GMAC wholesale business as "profitable," as stated to the Senate in 1959, could have applied to that of 1955 in particular, or of other years when the margin was greater.

<sup>5</sup> Senate hearings, 1959, op. cit., pp. 448, 456.

In contrast to GMAC's interest cost-wholesale rate margin of 0.28 percent, the largest independent finance company had a 1.26-percent margin in effect in 1953 (and 2 percent or more for most of the 1952-57 period). In view of the traditional importance of wholesale credit in procuring retail business and the intense competition among independents, it would seem implausible that the largest independent would overprice its wholesale credit, in competition against either GMAC or other companies.

The actual saving to a GM dealer benefiting from a one-half of 1 percent lower wholesale rate and lower flat charge per car for insurance would amount to \$2.50 a car comparing GMAC's terms and those of a major competitor, the Ford spokesman told the Senate subcommittee in 1959.

Such a difference is significant, considering the narrow profit margins on which dealers operate. According to the National Automobile Dealers Association, all dealers' net operating profit per new car sold in 1960 averaged \$22, or only one-half of 1 percent, before Federal income taxes. These figures include finance reserves.

Early in 1959, shortly after divestiture bills were introduced in the Senate, GMAC raised its wholesale rate to meet the prevailing industry rate—but it had maintained a lower-than-industry rate continuously from late 1954 into 1959, except for a 10-day interval. GMAC's flat rate charge still held in 1959 at an estimated \$1 per car below others prevailing.

#### GM DEALER HAS FIVE POCKETS OF INCOME

"The GM dealer receives five incomes controlled by GM and its subsidiaries, an exclusive General Motors privilege. They are (1) the markup on the new car, (2) the normal reserve for losses on time sales set up on the books of GMAC, (3) the overage or pack charged to time buyers when the charges reach or approach the maximum set by law, and such overage is then credited to or paid to the dealer by GMAC, (4) the commission paid auto dealers on insurance included and paid for in the time sale contract, (5) the income, so long as the dealer remains a GM dealer, from the repairs and parts replacements under losses under such policies.

"Under the GM mobility-of-subsidy plan, all these incomes are under GM control and passed on to the dealer from GM or its subsidiaries. With an understanding of this, it becomes clear why GMAC with all its freak advantages of leverage, low money costs, and practically no acquisition cost, permit high charges to the public.

"The maximum rates simply generate the overages or packs paid by the time buyers. GMAC then becomes the source of this pocket of income for the dealers. This, along with the other four pocketbooks, enables GM to control and hold the GM dealers from going to other manufacturers. It practically eliminates dealer turnover from GM to other manufacturers and attracts the best dealers from the other manufacturers."

Besides being tied to a single source for all five sources of income, the dealer is further kept under the factory's control by the delayed nature of two of the five sources. The same witness explained (p. 305):

"The dealer has two immediate incomes—the markup on the car and the commission on the insurance—and two delayed incomes—the profitable reserve on the books and in the possession of GMAC, and the profits he will make on repairing cars under insurance losses on policies he has written with the GMAC insurance subsidiary.

"It doesn't take any great imagination to see that such a dealer would hesitate to switch franchises to a Ford or Chrysler product, or back in the days of Kaiser-Frazier, to their franchise.

"This dealer would have to trust a finance company belonging to an unfriendly manufacturer to collect his accounts well in order that no unusual losses would occur so that the direct profits from the reserves would come to him in that amount that he expected in the beginning. This dealer knows that the delayed income on the repairs to cars under losses on the insurance policies would certainly not go to him but instead to the dealer who succeeded him in the General Motors franchise."

\* Auto financing legislation, Senate hearings, 1959, pp. 303, 304.

If GM and GMAC were divorced and other auto manufacturers likewise forbidden to own finance companies, the factory would control only one of the dealer's "five pocketbooks of income"—the sale of the car—proponents of such action point out.

This would put all manufacturers, present and future, on the same footing.

GM dealers could continue to get the four other pockets of income from an independent GMAC, without any factory pressures from this source on inventory loading.

Dealers of other makes could use the same services. And all dealers could use the services of other independent finance companies and other institutions, according to their free choice.

The CHAIRMAN. Thank you, Mr. Cassat.

We will now terminate the hearings for today and we will meet tomorrow morning at 10 o'clock to hear Mr. Louis Werner, of Peat Marwick & Mitchell, Chicago, Ill.; Hon. Lee Loevinger, Assistant Attorney General, Antitrust Division, Department of Justice; Hon. Paul Rand Dixon, Chairman, Federal Trade Commission; and David B. Steere, president, Allied Finance Corp., Dallas, Tex.

We will now adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 5:20 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, June 8, 1961.)



## AUTO FINANCING LEGISLATION

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THURSDAY, JUNE 8, 1961

HOUSE OF REPRESENTATIVES,  
ANTITRUST SUBCOMMITTEE  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Toll, McCulloch, and Meader.

Also present: Herbert N. Maletz, chief counsel; William H. Crabtree, associate counsel; and Herbert Fuchs, assistant counsel.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is the Honorable Lee Loevinger, Assistant Attorney General of the Antitrust Division of the Department of Justice.

Judge Loevinger, we will be very happy to hear from you. Will you identify the gentlemen on your left and right?

**STATEMENT OF HON. LEE LOEVINGER, ASSISTANT ATTORNEY GENERAL; ACCOMPANIED BY JOHN DUFFNER, LARRY WILLIAMS, AND SAM GORDON, ATTORNEYS, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE**

Mr. LOEVINGER. I am accompanied by Mr. John Duffner, Mr. Larry Williams, and Mr. Sam Gordon, all of whom are attorneys in the Antitrust Division of the Department of Justice.

I am appearing today at your request to present the views of the Department of Justice on H.R. 71. This bill would make it unlawful for a manufacturer of motor vehicles to own or control facilities for financing the wholesale or retail sale of motor vehicles produced by such manufacturer. The manufacturer would also be prohibited from owning or controlling facilities for issuing insurance policies in connection with the sale or purchase of its motor vehicles. The bill would be enforced by the Attorney General through action in the district courts. A manufacturer could extend short-term credit to dealers and others who buy at wholesale.

Among the domestic automobile manufacturers, only General Motors Corp. and Ford Motor Co. own subsidiaries engaged in automobile financing and insurance. General Motors, through its wholly owned subsidiary, General Motors Acceptance Corp. (GMAC), has engaged in automobile financing since 1919. With assets in 1960 of



\$5.2 billion, bills and notes receivable of \$4.9 billion, and 1960 net earnings, after taxes, of \$52.5 million, GMAC is the world's largest sales finance company.

GMAC's bills and notes receivable at the close of 1960 exceeded in dollar amount the loans and mortgages of the Chase Manhattan Bank. General Motors also owns Yellow Manufacturing Acceptance Corp. (YMAC), which finances sales of GM's trucks, buses, and earthmoving equipment. YMAC's assets in 1959 totaled \$255.2 million, its volume of business was \$444.6 million, and its net income, after taxes, was \$1.3 million.

GMAC has a wholly owned subsidiary, Motors Insurance Corp. (MIC), which engages in automobile insurance and is probably the Nation's largest automobile insurer. MIC had assets of at least \$228.4 million in 1960; its net premiums totaled \$172 million, and its net earnings, after taxes, in 1960 were \$5.1 million.

Ford Motor Co. and Chrysler Corp. ceased their affiliations with automobile finance companies pursuant to antitrust consent decrees entered in 1938. Ford has recently reentered the automobile financing field with the establishment, in late 1959, of a subsidiary, the Ford Motor Credit Co. Ford has also established American Road Insurance Co., a wholly owned subsidiary, to engage in automobile insurance.

Neither Chrysler nor Studebaker-Packard engages in automobile insurance or financing. While American Motors Co. has a financing subsidiary, apparently it engages in financing of household appliances rather than automobiles.

Under H.R. 71, General Motors and Ford, as a practical matter, would be required to divest themselves of their financing and insurance subsidiaries since they could retain them only if they were not used to finance or insure motor vehicles of their own manufacture. No doubt General Motors and Ford would be unwilling to use their subsidiaries solely to aid in the financing and insuring of vehicles manufactured by their competitors.

H.R. 71 is designed to remove competitive inequalities in three fields: those existing among motor vehicle manufacturers since some have financing and insurance subsidiaries while others do not; those among financing institutions since some are integrated with auto manufacturers while others have no such affiliation; and inequalities existing among insurance companies because some are owned by auto manufacturers while others are not.

During the past 23 years, the Department has concerned itself with antitrust problems in these and related fields. In the 1930's, Ford and Chrysler, as well as General Motors, had automobile financing subsidiaries or affiliates. Criminal antitrust suits were brought separately against GM, Ford, and Chrysler in 1938, based on Sherman Act charges of conspiracy to coerce the dealers to use the financing offered by the manufacturer's subsidiary or affiliate and to discriminate against independent automobile sales finance companies.

The criminal cases against Ford and Chrysler were dropped and civil suits were instituted in their place followed by consent decrees in 1938 restraining them from coercing their dealers to use their financing and from discriminating against independent finance companies.

The decrees also prohibited Ford and Chrysler from owning or controlling finance companies, but provided that this prohibition would

be inoperative if the Government did not obtain divestiture of GMAC from GM by a certain date.

GM refused to enter into a consent decree at that time. The 1938 criminal case, which charged violation of section 1 of the Sherman Act, was tried on the merits and resulted in conviction of GM and GMAC (and other GM subsidiaries) in 1939. The conviction was sustained on appeal (*United States v. General Motors Corporation*, 121 F. 2d 376 (C.A. 7, 1941), cert. den. 314 U.S. 618 (1941), rehearing den. 314 U.S. 710).

The CHAIRMAN. Is it not a rather anomalous situation that the companies that chose to enter into a consent decree and divest themselves of any affiliation with finance companies found themselves in a position where, if they had fought the case, they would not have been in the position of having to do without a finance company, whereas the other company, General Motors, which sought to fight the case, was not barred from engaging in the financing business?

And then you have the situation where a criminal proceeding was instituted which resulted in a conviction against General Motors. Nevertheless, GM obtained a consent decree in the companion civil case which permitted it to go on with the evil—I say “evil” because the Government’s contention originally was that that was an evil.

Is this not a rather anomalous situation?

Mr. LOEVINGER. Whether it was evil or not, it was at least a crime because it was so adjudicated.

I think it is anomalous, sir. I think in some respects this case, won by the Antitrust Division against General Motors, that I have just referred to and cited, although it is on the books as a victory, may properly be regarded as one of the great failures of antitrust.

And perhaps this is something that might merit congressional consideration as to what might be done to prevent such an anomaly.

The CHAIRMAN. Is that consent decree res adjudicata as to the facts in that case? And if it is res adjudicata, then is not the only way open to remove the evil, if there is evil, recourse to Congress?

Mr. LOEVINGER. The question of whether or not the consent decree against Ford and Chrysler is or is not res adjudicata has been the subject of litigation and, as to both of them, has gone to the U.S. Supreme Court on at least some aspects of those issues.

The CHAIRMAN. How about the consent decree entered into subsequently by General Motors?

Mr. LOEVINGER. I would prefer not to comment on the legal effects of that, Mr. Chairman, because I would prefer to keep myself at liberty to examine the legal issues and to take such position as that examination might indicate to be warranted, without being prejudiced by having made a statement to you, sir.

The CHAIRMAN. Do you think—you do not have to answer this if you do not wish to because of your position—do you think that the consent decree that was entered into by General Motors was in the public interest?

Mr. LOEVINGER. Do I personally think that? I have no right to speak for anyone but myself on this, sir.

The CHAIRMAN. Personally, yes.

Mr. LOEVINGER. Personally, I do not.

Mr. McCULLOCH. When was that decree entered, Mr. Chairman?

The CHAIRMAN. 1952.

Mr. McCULLOCH. I would like to make one comment.

The CHAIRMAN. It was a Democratic administration.

Mr. McCULLOCH. I just like to have these things placed on the record. I was interested in your comment, Mr. Chairman, concerning the type of relief which has grown out of these cases—the final provisions of the consent decree and the effect of the criminal action.

You know, I am inclined to believe, Mr. Chairman, from the study I have given to this subject, that the proceedings were in strict accordance with law and in accordance with Anglo-Saxon legal tradition. I cannot see that there is anything wrong when a litigant, especially when the powerful Government is a party against him, takes advantage of everything that is in the law.

It appears to me, from a quick reading of the consent decree hearings, that the Government decided it did not have the necessary evidence to secure divestiture. The business practices resulting from that decree, I think, must have some solid basis in the rights of litigants, both in private and in public matters.

Mr. MEADER. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. MEADER. I think it should be noted, and I thought yesterday when this subject was raised, that the attorney for the Justice Department who acted for the Government in entering into this consent decree was Holmes Baldridge, who was an individual who was praised by the majority of this subcommittee in connection with the consent decree investigation of A.T. & T. and Western Electric, because he violently favored divestiture in that case.

The CHAIRMAN. If I remember correctly, I will say to the gentleman from Michigan, that Mr. Baldridge was not praised at all.

He was called as a witness before this committee on the A.T. & T. case, but I do not recall any praise for him on the *General Motors* case.

With regard to the *General Motors* case, I personally think that this was something that should have been left to the courts, so that future administrations would not be embarrassed in a case of such tremendous magnitude, one which impinged so much on the public interest.

Mr. MEADER. Mr. Chairman, may I proceed with a question?

Mr. McCULLOCH. Might I just make one further statement. At the time General Motors consented to the entry of a consent decree, the Government was in control of the case. The defendant in refusing to agree to a divestiture only asserted the rights that any litigant should have in our society.

I now yield.

Mr. MEADER. Mr. Chairman, since the question of *res adjudicata* in the consent decree of 1952 has been raised, I think I ought to call Mr. Loevinger's attention to testimony given yesterday, commencing on pages 148, 149, and 150 of our hearings of yesterday, where Mr. Omacht, the counsel for the American Finance Co. and one of the officers of the independent finance companies, testified about conversations with the Justice Department concerning this point, both in the previous administration, and then he referred to a conversation with you, Mr. Loevinger, and I would like to read part of it.

The chairman said to Mr. Omacht:

Have you had such an opinion from the present Attorney General?

And Mr. Omacht said:

Yes. You did not ask me if it was in writing, did you?

The CHAIRMAN. What is that?

Mr. OMACHT. You did not ask me if it was Mr. Loevinger's opinion that was in writing? It was not in writing, but we have talked to him about it.

The CHAIRMAN. And if it is true that the divestiture matter is *res adjudicata*, would that not be the best reason in the world to feel that there is an evil here by continuing the joining of General Motors and GMAC; would you not say that that is the best reason in the world why you come to Congress for relief?

And Mr. Omacht answered in the affirmative.

But I did want to point out, Judge Loevinger, that there was testimony yesterday that you had rendered an informal oral opinion to Mr. Omacht and his associates that 1952 was *res adjudicata* on the point of divestiture.

Mr. LOEVINGER. I am not aware, sir, of having rendered such an opinion or having intended to do so.

As you are probably quite aware yourself, there is some difference between sitting in your office and having a casual conversation with people who are informally discussing a subject with you and making a statement to which you give consideration in the light of the fact that you are addressing Congress or that your remarks are being taken down.

It is possible that I may in the course of a casual conversation have made a remark that was susceptible of such an interpretation.

I certainly would not deny that possibility or claim that anyone was misquoting me. I have not rendered any opinion and have not intended to render any opinion that is entitled to any weight as a legal judgment arrived at on the basis of considering the matters involved here as to the legal effect of these decrees.

We have some memorandums in our files. There have been staff members that have worked on this. It is an extremely complex matter involving many considerations, both factual and legal, and we are simply not prepared to state a position on that.

Mr. MEADER. I believe you will agree with me that this is a very important point bearing upon the necessity of this legislation, because if divestiture is not foreclosed because of *res adjudicata*, then the ability rests with the Department of Justice to proceed to accomplish divestiture if it is considered desirable, without new legislation.

Mr. LOEVINGER. Yes, sir.

Mr. MEADER. And legislation restricted to a special industry.

Mr. LOEVINGER. Let me point out three things: First, whether or not *res adjudicata* exists, it is self-evident that if such an attempt were made by the Department of Justice, GM would raise the claim of *res adjudicata*. This would involve a most protracted and difficult lawsuit, in any event.

In the second place, part of the problem that you run into has already been exemplified by the civil suit that was against General Motors.

General Motors has something on the order of 15,000 dealers. I don't know whether it is a few more or a few less now, but it runs into tens of thousands.

If the Government claims that the existence of the relationship has a coercive effect and calls some of the dealers to testify to that as it did in the criminal case, then General Motors contends it has to call

all of the others to testify that they weren't coerced or at least to explore their relationship to General Motors and GMAC.

Well, if you start calling 15,000 dealers by doing nothing more than taking testimony, you can prolong the trial of a case not only for a long period but possibly even beyond the resources of the Department of Justice.

And since time is on the side of the person who is defending, this can in and of itself be a potent weapon.

In the third place, in the *Ford Motor Co.* case, in the Supreme Court, Justice Black expressed doubt that in the face of the proceedings that had been taken a Federal court would order divestiture of a finance company from an automobile manufacturer.

Now, this is not a majority opinion nor is this a flat dictum. But it is an expression, at least from the highest source and entitled to considerably more weight than anything I might say to you, and I think that those factors, although not conclusive, should be weighed.

Mr. MEADER. Judge Loevinger, I am a little confused about the reference to coercion.

The injunction prohibits coercion at this time, and that would merely be a matter of contempt proceedings whether or not the decree was disobeyed.

As I understand it, the question of divestiture would more properly be under section 7 of the act. It would not involve the problem of coercion, the protracted litigation that you envisage with all these witnesses.

Mr. LOEVINGER. There are legal questions also as to that.

GMAC was set up as a subsidiary of General Motors, and section 7, so far as I am aware, has not yet been applied to any corporation that was set up as a wholly owned subsidiary of another corporation.

Again, I am not prepared to express an opinion as to whether it should or should not apply. The reason that I understand that the consent decree was accepted by Mr. Baldrige in 1952 was his opinion that they could not then currently prove the existence of coercive tactics.

I would assume that it might be the position of the Government in any such suit that the existence of the mere relationship between GMAC and GM was inherently coercive.

Again, this is a rather offhand opinion, and I would like to reserve both for myself and the Justice Department the right to take any other position if we should ever be in court, because I simply haven't given adequate thought to this to be able to state a position that will commit us.

Mr. MALETZ. Mr. Chairman?

Judge Loevinger, as you testified, General Motors and GMAC were convicted by a jury for engaging in a conspiracy in restraint of trade in violation of section 1 of the Sherman Act, isn't that correct?

Mr. LOEVINGER. Yes, sir.

Mr. MALETZ. Now, the companion civil suit charged General Motors and GMAC with conspiring to restrain trade in violation of section 1 of the Sherman Act, is that right?

Mr. LOEVINGER. Yes, sir.

Mr. MALETZ. Wasn't the criminal conviction *res adjudicata* with respect to the violations so far as this civil complaint is concerned?

Mr. LOEVINGER. I think it might be. Apparently, it was not used as such in the civil case.

Mr. MALETZ. When defendants are convicted beyond a reasonable doubt of having violated section 1 of the Sherman Act, and when the parties in the civil suit are exactly the same, haven't a great number of courts held that the criminal conviction is *res adjudicata* in the civil case?

Mr. LOEVINGER. I don't believe there are a great number of holdings. I think there are some, sir.

Mr. MALETZ. Yes. Well, if this doctrine of *res adjudicata* applied in the civil case, wasn't the only basic issue in the civil case the question of relief?

Mr. LOEVINGER. There were other charges in the civil cases, and I assume that the Government attorneys were not sure that a Sherman Act, section 1 charge, even if established, was sufficient to secure divestiture.

Mr. MALETZ. But the basic issue, the issue of violation had already been adjudicated in the criminal case, had it not?

Mr. LOEVINGER. That is section 1 of the Sherman Act?

Mr. MALETZ. Yes.

Mr. LOEVINGER. Yes, sir.

Mr. MALETZ. Now, that being the case, if the Department of Justice had litigated the civil action, the basic issue in the civil action would have simply been the question of relief, isn't that true?

Mr. LOEVINGER. There appear to me to have been some other issues.

The difficulty with this line of inquiry, Mr. Maletz, if I may be presumptuous enough to suggest it, is that I don't see much profit in trying to second-guess that case.

Whether or not the decision by the Government lawyers was right or wrong doesn't really help us much now.

I think that the present position, the present legal position of the Government, is relevant, but I don't want to be in the position either of approving or disapproving what predecessors in the Antitrust Division have done. I don't think that it is appropriate for me to attempt to pass judgment on whether or not they were right in circumstances it is very difficult for me to recapture.

Mr. MALETZ. Well, may I ask you this: Is there in your personal judgment any basic distinction as a legal matter as between the facts in the Du Pont-General Motors situation and the facts in the General Motors-GMAC situation?

Mr. LOEVINGER. Oh, yes, I think the facts of the cases are quite distinguishable, and while some of the legal principles may be applicable, I wouldn't want to say the cases are the same.

Mr. MALETZ. There are certain distinctions in fact, but conceptually is there any distinction generally between the two types of situations?

Mr. LOEVINGER. I think one might almost say that cases of such character as those involving Du Pont and General Motors involve such large and significant aggregations of economic power that each one is *sui generis*. It is very difficult for me to say that you would have a precise analogy to this case.

Certainly the legal principles that have been established by the Supreme Court in the *Du Pont-General Motors* case are of widespread applicability.

On the other hand, those principles have been only very recently established.

Mr. MALETZ. The reason, Judge Loevinger, for asking this latter group of questions was because of testimony by Judge Thurman Arnold before the Senate Antitrust Subcommittee.

He testified in part as follows, and I quote from page 271:

But these bills are not an amendment of the antitrust laws to make them apply differently to the automobile industry or the GM-GMAC combination than they do to other industries. They attempt only to remove a special privilege which now prevents the antitrust law from being enforced against GM.

Du Pont's stockownership in GM was held to be in violation of section 7 in a far weaker case than was the divestment suit against General Motors. No other corporation with the power of General Motors may lawfully ally itself exclusively to a large financial organization where the effect is to impose a competitive handicap on smaller manufacturers.

It would be a grave injustice to the independent finance companies as well as to the smaller automobile companies if Ford is allowed to violate the law laid down in the *Du Pont* case. It would cut down the free financial market open to independents to a tremendous extent. It would increase the disability of the independent smaller automobile companies which were so close to being driven out of business. They were saved only because they had the imagination and energy to put out a small car which has so much popular appeal that GM is letting GM dealers sell it and GMAC finance it.

And skipping a paragraph:

If one of these bills is not passed, the largest company in the automobile industry and the dominating industrial concern in the United States is going to have a special privilege in finance accorded to no one else in the financing field. If Ford and Chrysler should acquire their own finance companies, they are going to have a limited privilege which will be effective only if the Department of Justice and the Federal Trade Commission wink at their violation of section 7.

Would you care to comment any more than you have?

Mr. LOEVINGER. I would prefer not to.

Mr. MALETZ. On this fact of Judge Arnold's testimony?

Mr. LOEVINGER. I would prefer not to.

The CHAIRMAN. I didn't hear your answer.

Mr. LOEVINGER. I said I would prefer not to comment.

The CHAIRMAN. Oh, I see, all right.

Supposing you go on with your statement then.

Mr. LOEVINGER. In the *United States v. General Motors* the Government proved that defendants had been coercing GM dealers to use the financing of GMAC at wholesale and retail levels and had been discriminating against other sales finance companies. The coercion and discrimination were effected by such means as threats to cancel and actual cancellation of dealers' franchises for not giving their finance business to GMAC; GM's withholding delivery of cars when they were in short supply or delivery of excess cars or cars of the wrong model or color, in periods of overproduction to noncooperating dealers; and defendants arranging matters so that independent sales finance companies could not get or were delayed in getting necessary title instruments for financing the GM dealers.

In October 1940, the Government commenced a civil suit for divorce against GM and GMAC, under the Sherman and Clayton Acts. This was based on many of the same charges of coercion of dealers and discrimination against independent sales finance companies. The war intervened and thereafter defendants resorted to excessive discovery proceedings, including the taking of close to 400 depositions.

Finally, the parties entered into a consent decree, dated July 28, 1952, enjoining coercion and discrimination but leaving GM's ownership of GMAC unchanged.

In the meantime, in 1949, the Ford and Chrysler consent decree bans against their affiliation with finance companies were lifted (see *Ford Motor Co. v. United States*, 335 U.S. 303 (1948)), and later the injunctive prohibitions of those decrees were amended to conform to the GM decree so that the consent decrees of the three big auto manufacturers were substantially the same.

In the Government's pending civil antitrust suit against General Motors<sup>1</sup> charging monopolizing in the manufacture and sale of buses, one of the charges is that GM has used its financing subsidiary, YMAC, as a weapon of monopolization by extending preferential financing terms which competitors could not meet.

The CHAIRMAN. Just a minute, Judge.

In that statement: "In the Government's pending civil antitrust suit against General Motors charging monopolizing in the manufacture and sale of buses, one of the charges is that GM has used its financing subsidiary, YMAC, as a weapon of monopolization by extending preferential financing terms which competitors could not meet."

Now, this latter charge—and you referred to one of the charges—is exactly what the pending bill involves?

Mr. LOEVINGER. Yes, sir.

The CHAIRMAN. Namely, a similar kind of extended preferential financing terms?

Mr. LOEVINGER. Sir, undoubtedly this bill, if it became law, would meet that charge in that pending case and would make any relief by way of litigation unnecessary so far as that charge is concerned.

In another pending civil antitrust suit against GM involving its acquisition of Euclid Road Machinery Co., a manufacturer of off-the-road, earthmoving equipment, the Government may rely, among other things, on GM's ownership of YMAC as giving it a competitive advantage over other manufacturers.<sup>2</sup>

In another field—railroad locomotives—an indictment has recently been returned against GM<sup>3</sup> charging monopolization of the manufacture and sale of diesel locomotives.

GM's financing and sale of locomotives on terms its competitors could not profitably match is alleged as one of the means used to effectuate the monopolization.

In view of all these circumstances, it appears that H.R. 71 may serve important antitrust objectives. The bill seeks to remove serious competitive disadvantages suffered by independent financing institutions as compared to those who are affiliated with the motor vehicle manufacturer. The theory of the bill, as I understand it, is this.

Because the dealer is utterly dependent on the manufacturer for his supply of vehicles and has extensive capital and savings tied up in the business, the slightest suggestion by the manufacturer that the dealer use its financing facilities is generally sufficient to accomplish that purpose. Moreover, the dealers have been educated to think of

<sup>1</sup> *United States v. General Motors Corp.*, E.D. Mich., Civil No. 15816 (filed July 1956).

<sup>2</sup> *United States v. General Motors Corp.*, N.D. Ohio, Civil No. 36032 (filed October 1959).

<sup>3</sup> *United States v. General Motors Corp.*, S.D.N.Y., Criminal No. 61-6R-356 (filed April 1961.)



themselves as belonging to the manufacturer's family and they find it prudent to keep their financing business within the family.

The dealers are thus a captive market for the manufacturer's over financing and other things being equal—for example, if the financing rates are the same—the independent finance companies are largely foreclosed from getting the business.

Furthermore, other things are not equal since the manufacturer's financing subsidiary can frequently offer financing to the dealers at lower rates. Its costs of acquiring the business of the captive dealers are less. Moreover, with the vast economic power of the manufacturer in back of it, the manufacturer's financing subsidiary gains tremendous financial leverage and it may borrow money more easily or on more advantageous terms than the independents.

The CHAIRMAN. Let me read a statement on that score.

Judge Brandeis said in his dissenting opinion in *American Lumber Co. v. U.S.* (257 U.S. 377) :

Restraint may be exerted through force or fraud or agreement. It may be exerted through moral or through legal obligations; through fear or through hope. It may exist, although it is not manifested in any overt act, and even though there is no intent to restrain. Words of advice, seemingly innocent and perhaps benevolent, may restrain, when uttered under circumstances that make advice equivalent to command. For the essence of restraint is power; and power may arise merely out of position. Wherever a dominant position has been attained, restraint necessarily arises. And when dominance is attained, or is sought, through combination—however good the motives or the manners of those participating—the Sherman law is violated provided, of course, that the restraint be what is called unreasonable.

And that fits exactly into this picture with reference to the relationship between dealers and automobile manufacturing companies.

Mr. McCULLOCH. Mr. Chairman, I would like to ask Judge Loevinger a question at this point.

Does the Justice Department have detailed information on the amount by percentages and on the amount by dollars that GMAC finances of the sale of automobiles by General Motors dealers?

What share of the market of General Motors products in percentages and in dollars does GMAC have in order that we may have a basis upon which to make a judgment?

Mr. LÖEVINGER. I think that those figures have been disclosed as of 1958 in hearings. We have some figures. I do not have them at my fingertips.

Mr. McCULLOCH. Counsel tells me that it is in the next paragraph of your statement.

One further question :

I note here that you state at the bottom of page 6 :

Moreover, with the vast economic power of the manufacturer in back of it, the manufacturer's financing subsidiary gains tremendous financial leverage and it may borrow money more easily or on more advantageous terms than the independents.

Now, yesterday I noted that the independents had gone to the open market for short-term funds. While I do not have the figures before me, I think the independents were able to secure short-term funds at a rate that was not very much at all in excess of what the Federal Government had to pay for short-term funds. I make this observation as a comment to this part of your statement.

**Mr. LOEVINGER.** Actually, the figures that we have from the American Banker, sir, show that the total capital funds available to GMAC as compared to its own capital and surplus represent a much larger ratio than those of any other substantial company.

**Mr. McCulloch.** Yes, I certainly would agree with that. I was talking more about the rate in the marketplace.

**Mr. LOEVINGER.** I believe that is so. The difference is that the ability to borrow a larger amount on smaller invested capital in the financing business gives you a leverage that, in fact, is the equivalent of borrowing at a lower rate, because you can make a higher rate of return on your own invested capital.

In other words, if you can borrow \$3,000 on \$1,000 of your own, and I can only borrow \$1,000, and each of us can lend our total accumulated funds or our total available funds at the same interest rate to borrowers, you are going to make a lot more money on the capital you have put up than I.

**Mr. McCulloch.** I would agree with that conclusion, but do we have any evidence, or will we have any evidence for the record, that the independent financing companies cannot borrow the same amount of money at the rates indicated.

**Mr. LOEVINGER.** Well, as I say, I do not know that this goes directly to the interest rates, but as recently as 1958 there was a contract between GMAC and a number of insurance companies which provided, in substance, that GMAC was entitled or could borrow a certain specified amount of money in terms, I believe, of hundreds of millions so long as it was owned by GM, but specifically provided that if its ownership by GM were terminated, that it could borrow only a substantially smaller amount of money.

Now, as I say, this is a leverage that is equivalent to being able to borrow at a lower rate.

**Mr. McCulloch.** Again, I am interested in knowing whether or not, in view of the general condition of the money market, is GMAC getting money at a cheaper rate than the independent finance companies?

**Mr. LOEVINGER.** As I say, I do not know exactly what you mean by "a cheaper rate."

I do not have evidence that the interest rate, in fact, paid is less. But, as I have pointed out, the ability to borrow more is the equivalent of a cheaper rate, and the figures that we have indicate that, in fact, GMAC has acquired more borrowed capital than the others have on comparable amounts of invested funds, so that this gives it the same advantages as though it had a cheaper rate.

**The CHAIRMAN.** Here is a conclusion of the Senate committee on that score, and I am reading from page 72 of the study of the anti-trust laws report of the Committee on the Judiciary, dated April 30, 1956. We have the following at page 72:

Since GMAC is able to borrow money by public borrowings on the basis of approximately \$95 of borrowed money to every \$5 of GMAC equity, because of its affiliation with General Motors, while independent finance companies have to obtain funds with which to compete on a borrowing basis of approximately \$30 to every \$5 of invested capital.

So that it may be—I do not know whether it is or not—that the rates to be charged to the finance companies for borrowing may be unlike

that charged to General Motors Acceptance Corp. by insurance companies and banks and so forth.

Yet, there are other advantages GMAC has because of its affiliation with General Motors, because General Motors stands behind GMAC; General Motors, with its vast amount of assets, with its towering assets, gives a tremendous leverage to GMAC which is absent in the case of the independent finance companies.

Mr. McCULLOCH. Mr. Chairman, with regard to the questions and answers that we were having a few moments ago, chief counsel has just supplied me with the statement by Charles G. Stradella, of General Motors Acceptance Corp., which apparently will be used here tomorrow, and from page 17, I wish to quote this paragraph:

First, it should be understood that the subordinated debt agreement referred to, as well as other similar agreements, have been modified. Regardless of General Motors Corp. ownership or nonownership, there is one maximum and one only. Accordingly, GMAC advantage in the subordinated debt area today is not due to ownership by General Motors Corp.

And, of course, this will be explored further when Mr. Stradella testifies.

I appreciate counsel calling this to my attention.

The CHAIRMAN. Even so, in my estimation, that does not change the general effect of the situation. It does not remove the advantage.

Mr. McCULLOCH. In due course, I hope there will be spread on the record the statistical record of the costs of borrowing funds together with any statements from reputable witnesses signifying whether or not the independent financing companies have been under to borrow funds for various length on time in the open market.

The CHAIRMAN. I believe we have that in the record already, Mr. McCulloch.

Mr. MALETZ. Mr. Chairman?

Judge Loevinger, I think you have already testified that General Motors and GMAC were convicted some years ago by a jury for exercising coercion on its dealers, with respect to financing of their automobile sales; is that correct?

Mr. LOEVINGER. Yes, sir.

Mr. MALETZ. Now, did these coercive activities by General Motors on its dealers result in part in GMAC obtaining a dominant position in the automobile sales financing industry?

Mr. LOEVINGER. Well, from reading the report of the case, and the facts are set out in some detail in the citation I gave of the opinion of the Court of Appeals for the Seventh Circuit, I would believe that a substantial part of GMAC's dominant position was the result of the exercise of the coercive tactics of GM.

At one point in the opinion it is pointed out that in Los Angeles General Motors dealers started to deal with other financing companies because in dealing with the other financing companies, although the rates were no more favorable, the purchasers were able to purchase with a lower downpayment and a longer period of repayment, thus making easier terms available to the purchasers, and, furthermore, the other financing companies did not require the dealers to sign a recourse agreement.

Explicitly for the purpose of avoiding the possibility that General Motors dealers in other parts of the country might undertake to seek similar types of outside financing, General Motors executives held a

conference in Los Angeles and undertook to warn the Los Angeles dealers that if they wanted to sell GM cars they would have to have GMAC financing.

As a result of such tactics which are laid out in considerable detail in the opinion of the court, GMAC was established in its position as the dominant financing agency for General Motors cars and General Motors dealers.

I think this is quite clear in the record.

Mr. MALETZ. In other words, GMAC did not obtain its dominant position in the industry through natural growth, did it?

Mr. LOEVINGER. It depends on what you call natural growth.

The CHAIRMAN. I infer from your statement that it obtained this dominant position through illegal operations, operations which caused them to get into the toils of the criminal law for which they were convicted?

Mr. LOEVINGER. Yes, sir; that is the only inference to be drawn from the record and the court decisions.

Mr. MALETZ. Now, in your personal judgment, does General Motors presently extend to GMAC preferential financial terms to General Motors dealers which competitors cannot meet?

Mr. LOEVINGER. I don't think I am in a position to answer that, Mr. Maletz.

The CHAIRMAN. Suppose you read your statement.

Mr. LOEVINGER. Yes.

Such advantages inhere in the manufacturer-financing subsidiary relationship and there is no need for them to violate the terms of the consent decree in order to foreclose the independents. As stated in a 1956 staff report of the Senate's Subcommittee on Antitrust and Monopoly:<sup>4</sup>

The competitive advantages of GMAC over other finance companies by reason of GMAC's affiliation with General Motors would appear to be obvious.

Thus, it is not surprising that in 1958, according to estimates supplied by General Motors, GMAC had about 85 percent of the total volume of financing extended by sales finance companies, as distinguished from banks, to GM dealers for time sales of new cars as compared to some 15 percent for the independent sales finance companies.<sup>5</sup> And GMAC's share of the financing of new cars sold by GM dealers on time slightly exceeded that of all the banks in the country.<sup>6</sup>

The preferred position of GMAC with respect to financing GM dealers' purchases and sales applies equally to GMAC's subsidiary, MIC, with respect to automobile insurance.

In addition to eliminating the competitive inequalities suffered by independent financing and insurance companies, the bill seeks to remove the competitive disadvantage suffered by the motor vehicle manufacturers who do not have their own financing and insurance companies.

<sup>4</sup> Staff report of the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, "Bigness and Concentration of Economic Power—A Case Study of General Motors Corp.," 84th Cong. 2d sess. 72 (1956).

<sup>5</sup> Hearings before the Senate Subcommittee on Antitrust and Monopoly, auto financing legislation, 86th Cong. 1st sess. 458 (1959).

<sup>6</sup> Ibid.

With almost 2 out of every 3 cars sold being sold on time, and with consumer automobile credit running as high as \$17 billion a year, financing is the lifeblood of automobile sales.

The factory possessing a finance company can use it as an important arm of its sales and marketing policy, and when GM, the largest automobile manufacturer in the world, owns GMAC, the largest sales finance company in the world, it is plain that such a manufacturer has important competitive advantages over other manufacturers. Ford's decision to reenter the automobile financing field in 1959 was, it stated, prompted by a desire to overcome those advantages.<sup>7</sup>

As I mentioned before, Ford had consented to a decree in 1938 forbidding its ownership of automobile financing companies, but only on condition that the Government obtain divestiture of GMAC from GM.

By 1946 this condition was not satisfied and Ford petitioned the decree court to lift the ban against its financing affiliation. When the court refused, Ford appealed to the Supreme Court and argued it was placed at a competitive disadvantage because GM still had GMAC while Ford was barred from having a financing affiliate.

The Supreme Court, in reversing the decree court, stated that, so far as the 1938 decree was concerned, Ford should be freed from "the persistence of an inequality against which [Ford] has secured the Government's protection." *Ford Motor Co. v. United States* (335 U.S. 303, 322 (1948)). Against this background it is quite plain that Ford is being forced into the finance business at considerable cost in order to meet the competitive advantage of GM, and that Ford and Chrysler would be quite as well off out of this business if only GM were not in it through GMAC.

The Senate subcommittee's staff report referred to earlier states:

Hence, as a competitive weapon, GMAC places General Motors in a position unique in the industry, and gives it an advantage over all of its competitors not the least of which is the substantial profit turned into the General Motors coffers by this very useful subsidiary.<sup>8</sup>

Outright coercion of dealers and discrimination against independent financing institutions may have ceased, as ordered by the 1952 GM-GMAC consent decree. However, that decree did not touch the built-in advantage inherent in the GM-GMAC relationship itself. The independent sales finance companies are still largely foreclosed from the GM market. And GM has retained or strengthened its position in the automotive and other motor vehicle manufacturing fields. While Ford is seeking to overcome GM's advantage by setting up its own financing and insurance subsidiaries, the other manufacturers apparently do not have sufficient capital and resources to do so.

The pendency of the various suits and proceedings against General Motors that have been mentioned, obviously makes it inappropriate to comment in detail on potential antitrust remedies to the GM situation.

But it is clear that, in any event, an antitrust suit for divestiture of the manufacturer's financing and insurance subsidiaries would take years to conclude. The General Motors bus case is already 5 years old and has not been decided. Divestiture of Du Pont's stock in General

<sup>7</sup> Id. at 189-190, 418.

<sup>8</sup> Staff report, op. cit. supra, note 4 at 71, 72. (This was written before Ford reentered the auto financing field.)

Motors, which has been decreed by the Supreme Court, may not be fully accomplished until 1971, some 22 years after the Government's suit was instituted (*United States v. Du Pont & Co.* (353 U.S. 586, (1957)) ; *United States v. Du Pont & Co.*, Supreme Court decision of May 22, 1961).

Any remedy of the present situation by litigation under the antitrust laws will be slow, at best. In the meantime, the competitive position of the other automobile manufacturers and financing organizations may weaken. If Congress finds this competitive imbalance sufficiently serious to warrant legislative action, it is our view that this would be consistent with the objectives of the antitrust laws. Ordinarily, the Department of Justice takes the position that these objectives should be sought by the application of the general principles of the antitrust laws to specific situations through the process of litigation.

However, the situation with which H.R. 71 is concerned has been the object of antitrust attention for at least 23 years.

In all candor, it must be conceded that the Antitrust Division has not yet succeeded in taking effective action in this situation. Legislative action would certainly be swifter and more certain than any possibility offered by litigation. It seems to me it would be quite reasonable for Congress to conclude that legislative action is now called for in these circumstances.

The CHAIRMAN. In other words, Judge, if there is wrongdoing, the public is entitled to have that wrongdoing erased as speedily as possible. Is that correct?

Mr. LOEVINGER. As a general principle, yes.

The CHAIRMAN. And, therefore, if we as members of this committee are confronted with an alternative of either action through the courts which would take years and years to erase the wrongdoing or a more expeditious proceeding through Congress, the conclusion is inescapable, is it not, that the public is entitled to expect Congress to adopt the second alternative by providing a faster remedy?

Mr. LOEVINGER. I think that is a decision for Congress, sir.

The CHAIRMAN. Any questions?

Mr. MEADER. Mr. Chairman?

Judge Loevinger, after letting the last two sentences of your statement sink in a little bit, I hope you don't mean to establish a precedent where the Justice Department finds the enforcement of the antitrust laws or other laws onerous and difficult that you turn to the Congress for speedy relief in specific situations?

Mr. LOEVINGER. I am trying not to establish a precedent, sir. I think it must be conceded, however, that there may be situations in which difficulties of law enforcement require legislative remedy, and the Department of Justice has asked Congress for certain legislation which we hope will be favorably considered in this session with respect to certain of those situations.

The CHAIRMAN. Well, we have a situation here, where it will take years: certainly it might take as long as the *Du Pont* case. Meanwhile if there is this wrongdoing, the wrongdoing persists.

Where does that leave the public?

Mr. LOEVINGER. As I have indicated, I think that the problem with which H.R. 71 is concerned is a problem with which the Antitrust Division has also been concerned for 23 years without yet getting close

to an effective remedy. This is not one of the brightest chapters in antitrust enforcement.

The CHAIRMAN. By dilatory tactics and delays, permitted under the ordinary litigation procedures, and with expensive counsel—I don't inveigh against these things—but with all those advantages the public is left in a difficult position. The public therefore looks to Congress for relief. If the Department of Justice is confronted with all those obstacles causing this delay, the conclusion is inescapable to me that Congress must take action and take it speedily.

That is my feeling about it. That is why I offered the bill.

Mr. McCULLOCH. On the contrary, Mr. Chairman, I would want the need for such legislative action to be clear and convincing. I would want the record to show almost beyond reasonable doubt that the ultimate consumer will be benefited by the legislative action, and that legislative action will not result in the consumer paying higher interest and other charges for the credit which he is seeking. I think this whole procedure this morning clearly illustrates the difficulty of a legislative committee going into all these areas and determining the final facts which will lead to a supportable conclusion.

All of the testimony, including your own, Judge Loevinger, is based upon the assumption, I take it, that the proposed actions will result in the common good. I repeat the common good, over a period of years.

And it is, of course, as you have very factually and very directly said, a departure from the position of previous Attorneys General and heads of the Antitrust Division, is it not?

Mr. LOEVINGER. I think Mr. Hansen declined to comment on a similar proposal when it was last offered, or asked to be excused from commenting.

The CHAIRMAN. I would want to counter what the gentleman from Ohio said.

The testimony yesterday was to the effect that any immediate advantage did not inure to the consumer, the purchaser of the car. It inured to the dealer, as far as insurance and financing was concerned.

And your testimony, Judge, clearly indicates that the affiliation of General Motors and GMAC places automobile manufacturing competitors and competing finance companies at a competitive disadvantage.

That being the case, certainly the public is hurt.

Mr. Maletz?

Mr. MALETZ. Mr. Chairman.

Judge Loevinger, it has been contended that adoption of this pending legislation would insulate independent sales finance companies from the rigors of effective and fair competition.

What is your view?

Mr. LOEVINGER. I think that a wholly groundless contention. It is perfectly apparent that GMAC is not going to suddenly fold up. It is the largest finance company in the world. It has assets, as I have indicated, up in the order of a billion dollars or has funds on this order.

It has perfectly fantastic amounts of business each year.

All that is going to happen is that it will operate independently, and it will presumably have to compete if it is to maintain its business, with the independent financing companies. It is the whole theory on which the Antitrust Division operates and on which I believe

Congress and our society operates, that competition will produce for the consumer the best terms and the best services in the long run in the judgment of the marketplace.

Mr. MALETZ. Do you regard the pending measure, H.R. 71, as discriminatory legislation?

Mr. LOEVINGER. No.

Mr. MALETZ. Have you had opportunity as yet to examine into possible questions of constitutionality with respect to H.R. 71?

Mr. LOEVINGER. No, sir; I have not done such a research job as would give me any confidence in expressing an opinion.

Mr. MALETZ. May I repeat a question which I believe was addressed to you by Congressman Meader?

In your judgment, would enactment, of this measure set an unsound or a dangerous legislative precedent?

Mr. LOEVINGER. I don't believe so.

Mr. MEADER. Mr. Chairman, may I inquire at this point whether the Justice Department was asked to report on H.R. 71 and whether we have received such a report?

Mr. MALETZ. The Chair has requested a report from the Justice Department on this measure but has not yet received such report.

Mr. LOEVINGER. I think my statement may be regarded as the report, sir.

The CHAIRMAN. What was that answer? I did not hear it.

Mr. LOEVINGER. I said you may regard my statement as the report.

The CHAIRMAN. All right.

Mr. Maletz?

Mr. MALETZ. I take it, Judge Loevinger, that it is your opinion that passage of this measure would increase competition in the automobile industry?

Mr. LOEVINGER. I believe so.

Mr. MALETZ. One final question, if I may.

Considering the present structure of the automobile manufacturing industry, is the ownership of a finance and insurance subsidiary by a vehicle manufacturer a proper extension of the vehicle manufacturing business in order to provide the necessary financing facilities to dealers and their customers?

Mr. LOEVINGER. Proper, of course, is one of those words which imports into your question the conclusion that you seek. If you pass this law, it is obviously the judgment it is not proper. If the Department of Justice brings a suit seeking divestiture, it is obviously the judgment of the Department of Justice it is not proper, and if a court should in any case render a judgment, decreeing divestiture, it would obviously be the judgment of the court it was not proper.

I suppose you have to postulate the standard by which you wish propriety to be judged.

Mr. MALETZ. I am just asking for your personal opinion as to whether it is a proper extension.

Mr. LOEVINGER. Personally I prefer to see a greater degree of competition than now exists, and I have indicated to you I think that divestiture would increase competition.

Mr. MEADER. May I ask one question?

Judge Loevinger, referring to counsel's question about discrimination and indicating that this is special legislation when it is related only to one industry, if it is wrong in the motor vehicle industry for



a manufacturer to maintain a financing subsidiary to facilitate the sale of its product, why isn't it also wrong in other industries?

Mr. LOEVINGER. Insofar as I can quickly formulate an answer for you, Mr. Meader, I think that I would say something like this. It has been increasingly contended by business in recent years that the generality of the antitrust laws which Chief Justice Hughes adverted to as a virtue is losing some of its virtue because the increasing complexity of business requires more certain and more specific rules.

If we are to have more certain and more specific rules, they must be rules that are formulated with regard to the particular situations to which they are applicable.

There are a number of situations developing in business by which various economic fields become differentiated from each other.

There is, for example, little analogy between the automobile manufacturing business and the food distribution business as an example, or the garment manufacturing business.

In order to both provide the more certain, more specific rules that business on occasion has sought, and also to make more certain that desirable social objectives or that social objectives thought desirable by Congress is achieved, it might be appropriate if Congress deems it so to legislate with reference to industries that are differentiated by virtue of economic factors such as size, dominance, capital requirements for industry, importance to the whole economy, and other elements of that kind.

Mr. MEADER. I think the other question was asked and you gave a very brief answer, that you believed that this legislation would result in greater competition in the automotive industry.

Mr. LOEVINGER. Yes.

Mr. MEADER. And I assume that you meant to imply that there would be a greater benefit to the ultimate consumer?

Mr. LOEVINGER. Yes, sir.

Mr. MEADER. In the reduced price of automobiles.

Mr. LOEVINGER. Yes, sir.

Mr. MEADER. Now it seems to me that is one of the central issues that this committee will be forced to pass upon in deciding what action should be taken on this legislative proposal.

What can we do to get into that area so that it isn't just a hunch and a guess as to whether the ultimate consumer is going to be benefited?

What elements can be developed to determine with some degree of clarity and certainty that if we pass H.R. 71, the ultimate car owner is going to get his automobile cheaper.

Mr. LOEVINGER. It is always a problem for Congress as for the courts to pass a judgment that involves in effect a projection into the future of what a hypothetical new situation may entail. One of the most reliable methods probably is to look at the record of the past.

In the case against General Motors involving GMAC, the court stated, as I indicated before, that while GMAC offered terms that were as low in the sense that the interest rate was no higher and in some cases lower than the independent companies, the independent finance companies offered terms which were considered more advantageous by many purchasers.

They were considered more advantageous because they required lower downpayments, because they permitted longer periods of repay-

ment, and because they did not require recourse to the dealers, and, therefore, gave the dealers an advantage.

Now, it may be that a lower interest rate, with a shorter period of repayment, is advantageous to some purchasers.

On the other hand, there may be others who may find that they need a slightly higher interest rate with a lower downpayment and a longer period of repayment so that their periodic payments are less and it seems to me that the public is entitled to that choice.

The CHAIRMAN. Is not the short answer to the question from the gentleman of Michigan, the following:

That the public will be benefited because the channels of competition will be open if there is divorcement?

According to your testimony, there will be more competition, and it is competition that brings the advantages to the public, is that not the short answer?

Mr. LOEVINGER. Yes; I believe so.

Mr. MEADER. If I might pursue this just to state the other side of the case and get your comments?

Mr. LOEVINGER. Surely.

Mr. MEADER. Judge Loevinger, originally the rates in the automobile financing business prior to the entry of the banks into the picture and prior to the development of the position that GMAC holds today were far higher and have been brought down by competition of GMAC and the banks.

And it could not very well be argued that to divorce GMAC from GM might result in less competition than there is today.

Mr. LOEVINGER. I have no doubt GM will attempt to so argue.

However, I see no reason why divorcement is going to in any way impede competition.

As I say, GMAC is not a struggling little company that is going to go out of business because of divorcement. It is the largest finance company in the world, and it is going to continue to be in business and it is presumably going to continue to compete with other finance companies.

There will be the same degree of competition from the same finance companies that are now in the field, except that the competition will be keener by virtue of the fact that GMAC will presumably lose whatever inherent advantages it has by virtue of its present affiliation.

Mr. McCULLOCH. Mr. Chairman, generally, I, of course, would agree with what Judge Loevinger has said, but not necessarily for all sections of the country.

There is competition now in my town of Piqua by reason of the ownership of GMAC by GM, or if not in my town, in a town of 50 or 500 in Minnesota.

But if the divorcement comes, in my opinion—and I hope there will be some evidence either to prove or disprove my opinion—it is going to cost more to finance motor vehicles in the towns of 400 to 500 with only the independent finance companies to choose from than it is with the conditions under which we have been living for the last decade or two.

That is one of the things I think this hearing should be productive of and have evidence on, Mr. Chairman.

The CHAIRMAN. General Motors Acceptance Corp. certainly will continue in business.

It does not follow that because the court has forced a divorcement of Du Pont and General Motors that either of those companies are going out of business.

They are going to continue to do business at the old stand as before, and General Motors Acceptance Corp. would continue to do business, also, even in your town.

Mr. McCULLOCH. Well, if there is a change, we hope they will continue to provide financing which is in the best interests of the consumer. But I do not want to assume this fact without there being adequate testimony upon which to base this conclusion.

The CHAIRMAN. I do not want to prolong this, but I think that if General Motors Acceptance Corp. were divested from General Motors, there would be more finance companies in your town because an opportunity might be afforded for more finance companies to come into the picture.

Mr. McCULLOCH. I hasten to add to the statement that there appears to be very adequate financing in my hometown by the banks, by the independent companies, and by GMAC at the buyer's choice.

Mr. CRABTREE. Mr. Chairman, may I ask a question?

Judge Loevinger, I have a few questions. The first question is a technical question directed at the bill. Do you have a copy of the bill.

Mr. LOEVINGER. Yes.

Mr. CRABTREE. The last section of the bill provides, and I quote:

No provision of this Act shall repeal, modify, or supersede directly or indirectly any provision of the antitrust laws of the United States.

Is that correct, Judge Loevinger?

Mr. LOEVINGER. Is that what?

Mr. CRABTREE. Is it correct that this bill will not repeal, modify, or supersede any of the antitrust laws?

Mr. LOEVINGER. If Congress passes it; it is.

Mr. MEADER. Is there not an inherent inconsistency?

Mr. LOEVINGER. This is obviously a supplement to the antitrust laws; there is no question about this.

Mr. CRABTREE. Now, sir, is it not true that ownership of a financing subsidiary by a manufacturer of automobiles is not a per se violation of the antitrust law?

Mr. LOEVINGER. We might want some day to contend that it is.

Mr. CRABTREE. At least at present that has not been added to the per se category such as price-fixing, boycotts, and so forth; is that correct?

Mr. LOEVINGER. No, sir; there is no court decision that so holds.

Mr. CRABTREE. In the event this bill becomes law, will not ownership of a financing subsidiary become a per se violation?

Mr. LOEVINGER. Yes, sir.

The CHAIRMAN. Under this act.

Mr. LOEVINGER. Under this act, in effect, yes. This is the practical effect of it.

The CHAIRMAN. Only in the automobile industry.

Mr. LOEVINGER. Only in the automobile industry.

Mr. CRABTREE. Now, then, that leads to my next question.

In the event this bill becomes law, suppose a company such as Caterpillar Tractor Co. decides it wants to manufacture trucks, but

determines that it can successfully go into the truck manufacturing business only in the event it can organize and run a finance subsidiary.

Would this company be able to go into the truck business?

Mr. LOEVINGER. Not on your postulate, but I see no grounds for your postulate.

It seems to me that the assumption that it could go into this business only if it could organize a financing company is completely contrary to everything that we know.

Mr. CRABTREE. That would be a business decision for the company to make?

Mr. LOEVINGER. There is not the slightest evidence that there is a warrantable hypothesis.

In fact, American Motors has gone in, Kaiser went in, Studebaker-Packard is in, there are foreign automobile distributors in the country, without their own financing affiliates.

I see no basis for such an assumption. If you make the assumption, the conclusion follows, but it is an unwarranted assumption.

Mr. CRABTREE. In any event, would there be any antitrust objections to such a company maintaining a finance subsidiary?

Mr. LOEVINGER. Again, I cannot answer a question of this sort because it involves too many unspecified conditions and circumstances.

Mr. CRABTREE. Would there be any general objection as far as antitrust law or policy is concerned for Studebaker-Packard to form a finance subsidiary?

Mr. LOEVINGER. I do not know.

Mr. CRABTREE. Now, sir, I do not think it would be proper to ask what antitrust action the Antitrust Division may be contemplating against General Motors, but in the event that a section 2 monopoly case were brought, would not the Government in that case be able to request divestiture of GMAC from General Motors?

Mr. LOEVINGER. A candid answer is I do not know, but beyond this, I just do not think that it is appropriate for me to make any public statements as to the kind of relief that we can or might ask, because these relate to things we are going to be in court arguing about, and anything that I say is going to be embarrassing to the Government.

Mr. CRABTREE. Now, in the event this bill were passed and became law, would it not make the ultimate success of the Government in any such section 2 case more difficult?

Mr. LOEVINGER. You are talking about a hypothetical section 2 case, and, again, I do not think that I can really give you a useful answer to that. I am not trying to be evasive on this, but you are talking about a case that is not now pending; that is vaguely hypothesized; and I just do not think that I can form a judgment as to whether or not anything of this sort would be facilitated or impeded.

Mr. CRABTREE. Well, at least this would take away a part of a present alleged restraint that the Government would no longer be able to use in a subsequent monopoly case.

Mr. LOEVINGER. You mean it would eliminate one possible ground of complaint against General Motors?

Well, this is perfectly all right with us.

Mr. CRABTREE. Now, Judge Loevinger—

Mr. LOEVINGER. I might say that there is sometimes a fallacy, it seems to me, when we get to concentrating too closely on the legal aspect of these matters.

The purpose of the antitrust laws is not, if I understand them correctly, to enable the Antitrust Division to rack up a lot of statistics of cases won.

The purpose of the antitrust laws, if I understand them, is to establish a free economy in the United States in order that certain social and political conditions may prevail.

Our purpose in passing laws against murder is not to give prosecutors a chance to win a lot of cases but to keep people from being killed.

We have no objection to the elimination of things that are regarded as anticompetitive devices in the economy. This is our objective, too, and we do not care whether they are secured by effective legislative action or effective legal action.

We would much rather have a free economy than have a glorious statistical record for our Division.

Mr. CRABTREE. Judge, the reason for my questions were simply to bring out the differences in the approaches between the legislative approach to the problem and the judicial approach.

And if Congress does not act, there probably will be, I would assume, judicial proceedings in the future.

Mr. LOEVINGER. Do you think there should be?

Mr. CRABTREE. Having served with the Antitrust Division, I prefer not to answer that question.

Mr. LOEVINGER. That is pretty incriminating.

Mr. CRABTREE. Judge, ownership of GMAC by General Motors is an example of vertical integration, is that correct?

Mr. LOEVINGER. I do not know whether you want to call it vertical or conglomerate. Sometimes these two get a little confused. I suppose it is—

Mr. CRABTREE. Pure vertical integration?

Mr. LOEVINGER. It is not pure vertical integration, either. This is sort of a branch off here on the side.

Mr. CRABTREE. Has the Supreme Court ruled on this type of integration?

Mr. LOEVINGER. There have been cases involving various types of acquisition and integration, some of which the Government has lost, some of which it has won. There is no precisely analogous case except the GM-GMAC case itself.

Mr. MEADER. May I interrupt at that point.

You would not regard it as analogous to the Paramount ownership of theaters?

Mr. LOEVINGER. No.

Well, I spoke too quickly. I will not say there is no analogy, but clearly it is not a case that is on all fours.

Mr. MEADER. If the dealerships were corporately owned by General Motors, that would be analogous to the Paramount situation?

Mr. LOEVINGER. It would be more closely analogous, yes, sir.

Mr. CRABTREE. Judge Loevinger, what is the significance or meaning of the phrase in section 7 of the Clayton Act, as amended by the Celler-Kefauver Act, which provides that—

nothing contained in this section shall prevent a corporation engaged in commerce from causing the formation of a subsidiary.

Mr. LOEVINGER. We have had some very learned and lengthy confidential memorandums in the Department on that question, and we do not have a conclusion.

As a matter of fact, I think if you read further, you will find that it also says that you can form a subsidiary, provided, however, that this does not lessen competition.

Mr. CRABTREE. Yes, sir.

Mr. LOEVINGER. If you examine the legislative history, it is not a great deal more clear, and until some court tells us what it means, we will not be sure.

Mr. CRABTREE. I was leading up to this question. That phrase in the law will not prevent either the Government or a private party from bringing a section 7 case, is that correct?

Mr. LOEVINGER. I find it very difficult to see how a private party could bring a case.

Mr. CRABTREE. You do not think that a private party could bring a case?

Mr. LOEVINGER. I do not know. I think it would be extraordinarily difficult. If I recollect the history of this litigation, even after the Government's conviction, when Mr. Emich, who was one of the dealers that lost his business as a result of General Motors' coercion, undertook to sue General Motors, they first carried it to the Supreme Court on the question of whether or not the conviction in the criminal case was admissible at all.

And when the Supreme Court held that it was, it went on back down, and I am not certain of this but my impression is that they finally just outlitigated him and he did not get anything after spending years and much money.

Mr. CRABTREE. What I was attempting to bring out is: Is this avenue of relief open to private parties?

Mr. LOEVINGER. I think that talk about private parties suing General Motors in this situation is wholly unrealistic.

Regardless of whether or not there is a theoretical possibility of a suit under the law, I have tried a number of private suits, and to bring a suit of this magnitude on the basis of the kind of damages that could be established by any private party under the rules that the courts impose for the proof of damages by a private party would be to institute a lawsuit that you could not win.

I mean inevitably you could see at the beginning the cost to the litigant would vastly exceed any possible recovery.

No private party will institute a suit in those circumstances.

Mr. McCULLOCH. Would there be any possibility of a class suit if the agents or borrowers were convinced that they were harmed, legally harmed?

Mr. LOEVINGER. It would be extraordinarily difficult, sir. I do not suppose it is safe ever to preclude a possibility. But the class suit means that you have multitudinous plaintiffs, and while this gives you some help in instituting your suit, it also extends the scope of proof, the scope of trial, and you run into such things as this:

That the courts simply, as a practical matter, are not very hospitable to such suits.

Imagine what you would do as a judge if you were confronted with a trial of this sort. You would do your best to get rid of it one way or another.

Mr. MEADER. Judge Loevinger, this is a rather evasive question of antitrust philosophy, but I want to relate it, if I can, to a portion of your statement.

As I understand your statement, General Motors and General Motors Acceptance Corp. have certain competitive advantages, both over competing automobile manufacturers who do not have financial subsidiaries and as against the sales financing institution.

Some of these result from reduced cost of the money they borrow, reduced cost of acquisition of the paper.

Now, if GMAC is spun off, those and possible other competitive advantages will be lost to GMAC.

Is that essentially your statement?

Mr. LOEVINGER. I assume so.

Mr. MEADER. Well, since those advantages arising from this relationship will be lost, is it not inevitable that rates will go up?

Mr. LOEVINGER. No, not necessarily.

It is perfectly possible that competition may force General Motors to operate on something less than a profit of roughly 41.6 percent before taxes and 20 percent after taxes. It seems to me that this is a tolerable condition for a corporation of that size.

Mr. MEADER. I am getting back to this matter of size and the advantages inherent in size, the advantages of cheaper procurement, lower ratio of overhead to total operations, nationwide advertising and so on, which are inherent in size itself, and it has been by the mass production and size that we have really produced cheaper and have benefited the American public.

Now, we are losing some of those advantages by this procedure.

Mr. LOEVINGER. To that I would answer unequivocally "No". It is perfectly true that mass production has produced for the American public. We want and hope to foster maximum production.

I have seen no evidence that an aggregation of the size of General Motors and GMAC involves any of the economies of mass production because of its size. The economies of mass production may be involved in the kind of integration you get in having one large plant, or even in having a plant that is integrated physically with another plant.

There is no evidence that having the advantages of more money than anybody else and having the inherent advantages of being affiliated with sources of supply that give you a competitive advantage over somebody else has anything to do with the economies of mass production. Indeed, this is the very thing that the antitrust laws were originally passed to preclude.

You will recall that it was the oil trust fostered by the elder Rockefeller that was perhaps the principal political occasion for the passage of the antitrust laws or of the Sherman Act in 1890.

There is no question that by virtue of the size of the oil trust, it secured things that you might similarly refer to as "economies."

They secured rebates from railroads, they secured cheaper rates for transportation, they secured many discriminatory competitive advantages.

It was precisely to prevent this kind of thing that the Sherman Act was first enacted, and it is the whole theory of the antitrust laws, and I believe the theory of the Congress and our social organization, that such discriminatory competitive advantages are not, in the long

run, to the public advantage or to the public good, but in the long run cost the public and merely aggrandize a few who happen to enjoy those advantages.

**Mr. CRABTREE.** Mr. Chairman, I have just one further question. This is really for the purpose of putting something in the record.

Your statement, Judge Loevinger, departs from the policy of your predecessors regarding legislation which applies to a single industry, as opposed to legislation which would apply to all industries; is that correct?

**Mr. LOEVINGER.** I don't know that there has been such a policy.

**Mr. CRABTREE.** I would just like to read into the record two statements, both obtained from the hearings before this committee in July 1956 on the automobile dealer franchise bill.

On page 134 of those hearings, Judge Stanley Barnes, the Assistant Attorney General in charge of the Antitrust Division, stated:

I am advised this bill continues to be special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule, we continue to oppose special legislation applying to any one industry.

And in those same hearings on page 132, Attorney General William P. Rogers, who at that time was the Deputy Attorney General, stated in a letter, and I quote:

This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule, we continue to oppose special legislation applying to any one industry.

**Mr. LOEVINGER.** I agree with those statements, and made the same statement myself. I said:

Ordinarily the Department of Justice takes the position that objectives such as those sought here should be sought by the application of the general principles of the antitrust laws to special situations through the process of litigation.

However, the Department of Justice recognizes that there may be situations where Congress, in its discretion, may deem it appropriate to pass legislation, and if Congress desires to pass this legislation, we do not object to it. We have not sought it.

**Mr. CRABTREE.** I wasn't in disagreement with you, Judge. I just wanted to get this into the record. Thank you.

**The CHAIRMAN.** Mr. McCulloch.

**Mr. McCULLOCH.** Judge Loevinger, on page 7 of your statement, the middle of the page, is this paragraph, and I quote from it:

Thus, it is not surprising that in 1958, according to estimates supplied by General Motors, GMAC had about 85 percent of the total volume of financing extended by sales finance companies (as distinguished from banks) to GM dealers for time sales of new cars, as compared to some 15 percent for the independent sales finance companies.

If the banks were included, to what percent would the 15 percent be raised for this paragraph?

**Mr. LOEVINGER.** The 15 percent would be cut down to 7 percent if the banks were included.

**Mr. McCULLOCH.** It would come down to 7 percent?

**Mr. LOEVINGER.** Yes, sir, if the banks are included.

**Mr. McCULLOCH.** Why weren't banks included in this particular paragraph?



Mr. LOEVINGER. Well, there is some dispute. I don't really have a firm judgment as to whether they should or should not be. You can use the statistics either way you like.

I am advised that in general, bank financing is financing that is secured by the purchaser himself, whereas finance company financing tends to be financing secured by the dealer, rather than the purchaser.

In general, bank financing tends to be of those purchasers with a little better credit rating, who are more readily able to secure credit, and there is a differential. I am not prepared to argue as to which is the—

Mr. McCULLOCH. But the bank financing is the financing of motor vehicles both old and new of the manufacturer of all types of vehicles, is it not?

Mr. LOEVINGER. Yes, sir.

Mr. McCULLOCH. And to get the complete picture in the record, all the facts in the record, we, of course, ought to have the total amount of bank financing in this field, too.

Mr. LOEVINGER. Yes, sir.

The CHAIRMAN. Judge Loevinger, I want to compliment you for your forthright, candid, clear, and cogent observations.

We are grateful to you and to your colleagues for your very helpful and constructive advice and counsel. And, finally, rest assured that you are always welcome before this committee.

Mr. LOEVINGER. Thank you very much, Mr. Chairman.

(Judge Loevinger's prepared statement follows:)

STATEMENT OF LEE LOEVINGER, ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE ANTITRUST DIVISION, DEPARTMENT OF JUSTICE, ON H.R. 71, BEFORE THE HOUSE JUDICIARY ANTITRUST SUBCOMMITTEE, JUNE 8, 1961

I appear today at your chairman's request to present the views of the Department of Justice on H.R. 71. This bill would make it unlawful for a manufacturer of motor vehicles to own or control facilities for financing the wholesale or retail sale of motor vehicles produced by such manufacturer. The manufacturer would also be prohibited from owning or controlling facilities for issuing insurance policies in connection with the sale or purchase of its motor vehicles. The bill would be enforced by the Attorney General through action in the district courts. A manufacturer could extend short-term credit to dealers and others who buy at wholesale.

Among the domestic automobile manufacturers, only General Motors Corp. and Ford Motor Co. own subsidiaries engaged in automobile financing and insurance. General Motors, through its wholly owned subsidiary, General Motors Acceptance Corp. (GMAC), has engaged in automobile financing since 1919. With assets in 1960 of \$5.2 billion, bills and notes receivable of \$4.9 billion, and 1960 net earnings, after taxes, of \$52.5 million, GMAC is the world's largest sales finance company. GMAC's bills and notes receivable at the close of 1960 exceeded in dollar amount the loans and mortgages of the Chase Manhattan Bank. General Motors also owns Yellow Manufacturing Acceptance Corp. (YMAC) which finances sales of GM's trucks, buses, and earthmoving equipment. YMAC's assets in 1959 totaled \$255.2 million, its volume of business was \$444.6 million, and its net income, after taxes, was \$1.3 million.

GMAC has a wholly owned subsidiary, Motors Insurance Corp. (MIC), which engages in automobile insurance and is probably the Nation's largest automobile insurer. MIC had assets of at least \$228.4 million in 1960; its net premiums totaled \$172 million, and its net earnings, after taxes, in 1960 were \$5.1 million.

Ford Motor Co. and Chrysler Corp. ceased their affiliations with automobile finance companies pursuant to antitrust consent decrees entered in 1938. Ford has recently reentered the automobile financing field with the establishment, in late 1959, of a subsidiary, the Ford Motor Credit Co. Ford has also established American Road Insurance Co., a wholly owned subsidiary, to engage in automobile insurance.

Neither Chrysler nor Studebaker-Packard engages in automobile insurance or financing. While American Motors Co. has a financing subsidiary, apparently it engages in financing of household appliances rather than automobiles.

Under H.R. 71, General Motors and Ford, as a practical matter, would be required to divest themselves of their financing and insurance subsidiaries since they could retain them only if they were not used to finance or insure motor vehicles of their own manufacture. No doubt General Motors and Ford would be unwilling to use their subsidiaries solely to aid in the financing and insuring of vehicles manufactured by their competitors.

H.R. 71 is designed to remove competitive inequalities in three fields: those existing among motor vehicle manufacturers since some have financing and insurance subsidiaries while others do not; those among financing institutions since some are integrated with auto manufacturers while others have no such affiliation; and inequalities existing among insurance companies because some are owned by auto manufacturers while others are not.

During the past 23 years, the Department has concerned itself with antitrust problems in these and related fields. In the 1930's, Ford and Chrysler, as well as General Motors, had automobile financing subsidiaries or affiliates. Criminal antitrust suits were brought separately against GM, Ford, and Chrysler in 1938 based on Sherman Act charges of conspiracy to coerce the dealers to use the financing offered by the manufacturer's subsidiary or affiliate and to discriminate against independent automobile sales finance companies.

The criminal cases against Ford and Chrysler were dropped and civil suits were instituted in their place followed by consent decrees in 1938 restraining them from coercing their dealers to use their financing and from discriminating against independent finance companies. The decrees also prohibited Ford and Chrysler from owning or controlling finance companies but provided that this prohibition would be inoperative if the Government did not obtain divestiture of GMAC from GM by a certain date.

GM refused to enter into a consent decree at that time. The 1938 criminal case, which charged violation of section 1 of the Sherman Act, was tried on the merits and resulted in conviction of GM and GMAC (and other GM subsidiaries) in 1939. The conviction was sustained on appeal (*United States v. General Motors Corporation*, 121 F. 2d 376 (C.A. 7, 1941), certiorari denied 314 U.S. 618 (1941) rehearing denied 314 U.S. 710). The Government proved that defendants had been coercing GM dealers to use the financing of GMAC at wholesale and retail levels and had been discriminating against other sales finance companies. The coercion and discrimination were effected by such means as threats to cancel and actual cancellation of dealers' franchises for not giving their finance business to GMAC; GM's withholding delivery of cars when they were in short supply or delivery of excess cars or cars of the wrong model or color, in periods of overproduction to noncooperating dealers; and defendants arranging matters so that independent sales finance companies could not get, or were delayed in getting, necessary title instruments for financing the GM dealers.

In October 1940, the Government commenced a civil suit for divorcement against GM and GMAC, under the Sherman and Clayton Acts. This was based on many of the same charges of coercion of dealers and discrimination against independent sales finance companies. The war intervened and thereafter defendants resorted to excessive discovery proceedings, including the taking of close to 400 depositions. Finally, the parties entered into a consent decree, dated July 28, 1952, enjoining coercion and discrimination but leaving GM's ownership of GMAC unchanged.

In the meantime, in 1949, the Ford and Chrysler consent decree bans against their affiliation with finance companies were lifted (see *Ford Motor Company v. United States*, 335 U.S. 303 (1948)), and later the injunctive prohibitions of those decrees were amended to conform to the GM decree so that the consent decrees of the three big auto manufacturers were substantially the same.

In the Government's pending civil antitrust suit against General Motors<sup>1</sup> charging monopolizing in the manufacture and sale of buses, one of the charges is that GM has used its financing subsidiary, YMAC, as a weapon of monopolization by extending preferential financing terms which competitors could not meet.

In another pending civil antitrust suit against GM involving its acquisition of Euclid Road Machinery Co., a manufacturer of off-the-road earthmoving

<sup>1</sup> *United States v. General Motors Corp.*, E.D. Mich., Civil No. 15816 (filed July 1956).

equipment, the Government may rely, among other things, on GM's ownership of YMAC as giving it a competitive advantage over other manufacturers.<sup>2</sup>

In another field—railroad locomotives—an indictment has recently been returned against GM<sup>3</sup> charging monopolization of the manufacture and sale of diesel locomotives. GM's financing and sale of locomotives on terms its competitors could not profitably match is alleged as one of the means used to effectuate the monopolization.

In view of all these circumstances, it appears that H.R. 71 may serve important antitrust objectives. The bill seeks to remove serious competitive disadvantages suffered by independent financing institutions as compared to those who are affiliated with the motor vehicle manufacturer. The theory of the bill as I understand it is this. Because the dealer is utterly dependent on the manufacturer for his supply of vehicles and has extensive capital and savings tied up in the business, the slightest suggestion by the manufacturer that the dealer use its financing facilities is generally sufficient to accomplish that purpose. Moreover, the dealers have been educated to think of themselves as belonging to the manufacturer's family and they find it prudent to keep their financing business within the family. The dealers are thus a captive market for the manufacturer's financing and other things being equal (e.g., if the financing rates are the same) the independent finance companies are largely foreclosed from getting the business. Furthermore, other things are not equal since the manufacturer's financing subsidiary can frequently offer financing to the dealers at lower rates. Its costs of acquiring the business of the captive dealers are less. Moreover, with the vast economic power of the manufacturer in back of it, the manufacturer's financing subsidiary gains tremendous financial leverage and it may borrow money more easily or on more advantageous terms than the independents.

Such advantages inhere in the manufacturer-financing subsidiary relationship and there is no need for them to violate the terms of the consent decree in order to foreclose the independents. As stated in a 1956 staff report of the Senate's Subcommittee on Antitrust and Monopoly:<sup>4</sup>

"The competitive advantages of GMAC over other finance companies by reason of GMAC's affiliation with General Motors would appear to be obvious."

Thus, it is not surprising that in 1958, according to estimates supplied by General Motors, GMAC had about 85 percent of the total volume of financing extended by sales finance companies (as distinguished from banks) to GM dealers for time sales of new cars as compared to some 15 percent for the independent sales finance companies.<sup>5</sup> And GMAC's share of the financing of new cars sold by GM dealers on time slightly exceeded that of all the banks in the country.<sup>6</sup>

The preferred position of GMAC with respect to financing GM dealers' purchases and sales applies equally to GMAC's subsidiary, MIC, with respect to automobile insurance.

In addition to eliminating the competitive inequalities suffered by independent financing and insurance companies, the bill seeks to remove the competitive disadvantage suffered by the motor vehicle manufacturers who do not have their own financing and insurance companies. With almost two out of every three cars sold being sold on time, and with consumer automobile credit running as high as \$17 billion a year, financing is the lifeblood of automobile sales. The factory possessing a finance company can use it as an important arm of its sales and marketing policy, and when GM, the largest automobile manufacturer in the world, owns GMAC, the largest sales finance company in the world, it is plain that such a manufacturer has important competitive advantages over other manufacturers. Ford's decision to reenter the automobile financing field in 1959 was, it stated, prompted by a desire to overcome those advantages.<sup>7</sup>

As I mentioned before, Ford had consented to a decree in 1938 forbidding its ownership of automobile financing companies, but only on condition that the

<sup>2</sup> *United States v. General Motors Corp.*, N.D. Ohio, Civil No. 36032 (filed October 1959).

<sup>3</sup> *United States v. General Motors Corp.*, S.D. N.Y., Criminal No. 61-6R-356 (filed April 1961).

<sup>4</sup> Staff report of the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, "Bigness and Concentration of Economic Power: A Case Study of General Motors Corp.," 84th Cong., 2d sess. 72 (1956).

<sup>5</sup> Hearings before the Senate Subcommittee on Antitrust and Monopoly, "Auto Finance Legislation," 86th Cong., 1st sess. 459 (1959).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at 189-190, 418.

Government obtain divestiture of GMAC from GM. By 1946 this condition was not satisfied and Ford petitioned the decree court to lift the ban against its financing affiliation. When the court refused, Ford appealed to the Supreme Court and argued it was placed at a competitive disadvantage because GM still had GMAC while Ford was barred from having a financing affiliate. The Supreme Court, in reversing the decree court, stated that, so far as the 1938 decree was concerned, Ford should be freed from "the persistence of an inequality against which (Ford) had secured the Government's protection." *Ford Motor Co. v. United States*, 335 U.S. 303, 322 (1948). Against this background, it is quite plain that Ford is being forced into the finance business at considerable cost in order to meet the competitive advantage of GM, and that Ford and Chrysler would be quite as well off out of this business if only GM were not in it through GMAC.

The Senate subcommittee's staff report referred to earlier states:

"Hence, as a competitive weapon, GMAC places General Motors in a position unique in the industry, and gives it an advantage over all of its competitors not the least of which is the substantial profit turned into the General Motors coffers by this very useful subsidiary."<sup>8</sup>

Congressman Celler, in his address before the 27th Annual Convention of the American Finance Conference in November 1960, has graphically portrayed the tremendous concentration of economic power and the substantial competitive advantages enjoyed by General Motors in financing, insurance, and manufacturing by reason of its ownership of financing and insurance subsidiaries.

Outright coercion of dealers and discrimination against independent financing institutions may have ceased, as ordered by the 1952 GM-GMAC consent decree. However, that decree did not touch the built-in advantage inherent in the GM-GMAC relationship itself. The independent sales finance companies are still largely foreclosed from the GM market. And GM has retained or strengthened its position in the automotive and other motor vehicle manufacturing fields. While Ford is seeking to overcome GM's advantage by setting up its own financing and insurance subsidiaries, the other manufacturers apparently do not have sufficient capital and resources to do so.

The pendency of the various suits and proceedings against General Motors that have been mentioned, obviously makes it inappropriate to comment in detail on potential antitrust remedies to the GM situation. But it is clear that, in any event, an antitrust suit for divestiture of the manufacturer's financing and insurance subsidiaries would take years to conclude. The *General Motors* bus case is already 5 years old and has not been decided. Divestiture of Du Pont's stock in General Motors, which has been decreed by the Supreme Court, may not be fully accomplished until 1971, some 22 years after the Government's suit was instituted (*United States v. Du Pont & Co.*, 353 U.S. 586 (1957); *United States v. Du Pont & Co.*, Supreme Court decision of May 22, 1961).

Any remedy of the present situation by litigation under the antitrust laws will be slow, at best. In the meantime, the competitive position of the other automobile manufacturers and financing organizations may weaken. If Congress finds this competitive imbalance sufficiently serious to warrant legislative action, it is our view that this would be consistent with the objectives of the antitrust laws. Ordinarily, the Department of Justice takes the position that these objectives should be sought by the application of the general principles of the antitrust laws to specific situations through the process of litigation. However, the situation with which H.R. 71 is concerned has been the object of antitrust attention for at least 23 years. In all candor, it must be conceded that the Antitrust Division has not yet succeeded in taking effective action in this situation. Legislative action would certainly be swifter and more certain than any possibility offered by litigation. It seems to me it would be quite reasonable for Congress to conclude that legislative action is now called for in these circumstances.

The CHAIRMAN. Our next witness will be the distinguished Chairman of the Federal Trade Commission, the Honorable Paul Rand Dixon. Will you identify the gentlemen at the table with you.

<sup>8</sup> Staff report, op. cit. supra n. 4 at 71, 72. This was written before Ford reentered the auto financing field.

**STATEMENT OF PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOHN WHEELOCK, EXECUTIVE DIRECTOR; J. V. BUFFINGTON, ASSISTANT TO CHAIRMAN; AND J. M. HENDERSON, GENERAL COUNSEL, FEDERAL TRADE COMMISSION**

Mr. DIXON. Mr. Chairman, on my right is Mr. John Wheelock, the Executive Director of the Federal Trade Commission, to my immediate left is John Victor Buffington, special legal assistant to me as chairman, and on his left is Mr. J. M. Henderson, our general counsel.

Mr. Chairman, I have a short statement which I shall read hurriedly.

I appear today at the request of the chairman of this subcommittee to present the Commission's views on H.R. 71, a bill to prevent automotive manufacturers from financing and insuring the sales of their motor vehicles.

The bill would make it unlawful for any corporation engaged in the manufacture and sale in interstate or foreign commerce of motor vehicles to (1) own or maintain any facilities for financing the sale at wholesale or retail of the motor vehicles manufactured by such corporation or (2) to own or maintain any facilities for issuing insurance policies of any kind in connection with the sale or purchase of motor vehicles manufactured by such corporation.

If this bill were enacted into law, it would be enforced by the several districts attorneys of the United States in the district courts, under the direction of the attorney general, by the institution of suits to enjoin violations of the act.

The Commission is aware of the antitrust problems involved in the ownership by an automotive manufacturer of financing and insuring affiliates. In 1939, the Commission made a comprehensive report on the motor vehicle industry. This report, which was printed as House Document No. 468, 76th Congress, 1st session, discussed in detail the then current practices and policies of automotive manufacturers with regard to the financing and insuring of cars as well as many other aspects of the automotive trade. The inquiry was made pursuant to Joint Resolution No. 87 of the 75th Congress.

This report makes clear some of the difficulties which have occurred in the automotive industry. It speaks, for instance, of the pressure exerted upon dealers to use a particular finance company. The report states such pressure was of varying intensity and was exerted by methods ranging from persuasive salesmanship to threats of cancellation of a dealer's franchise.

This kind of activity, we believe, will inevitably affect competition from nonaffiliated firms which seek to finance or insure automobiles. In a business so highly concentrated as the automotive industry, a tie-in between a manufacturer and a financing or insuring company can substantially eliminate the competition which might otherwise exist from outside firms. The proposed legislation is calculated to effect a complete separation between the automotive manufacturer and its financing or insurance affiliates so that the possible adverse competitive effects cannot take place. In other words, if the automotive manufacturer has no financing or insurance affiliates, there will then be no question as to the availability of such business to the many concerns engaged in finance and insurance.

In May 1938, General Motors Corp., Ford Motor Co., and Chrysler Corp were each indicted on the charge that the automobile manufacturer had combined and conspired with its affiliated finance company or companies to restrain trade and commerce in the wholesale and retail sale and in the financing of its automobiles in violation of the Sherman Act. Chrysler and Ford entered into consent decrees in 1938 and the criminal cases were quashed. Criminal proceedings against General Motors resulted in conviction in 1939. A civil suit for injunction was instituted against General Motors in 1940, and a consent decree was entered in 1952.

The consent decrees have an important bearing upon the need and the desirability of the proposed legislation. I will not go into the subject in detail, except to note that each decree imposes restraints upon discriminatory practices as between the automotive manufacturer and the finance company. It is my understanding that the decrees do not prohibit the acquiring or retaining ownership of any finance company.

This then brings us to the subject of whether there should be legislation to go a step further than the decrees and require the complete separation of the various businesses. The proposed legislation would also require the separation of insurance affiliates.

This is a matter on which the Commission has made no special economic studies to determine whether any advantages would flow to the public if the legislation is passed. In fact, the Commission has made no general inquiry or study of an economic nature into the automobile industry since its report of 1939.

The Commission recognizes the serious problems involved in the area covered by the proposed legislation. The resolution of these problems involves the determination of broad economic antitrust policy by the Congress. It is to be noted that the bill calls for legislative divestiture of their finance and insurance companies by automotive manufacturers. Whether so drastic a remedy is necessary at this time or whether the existing situation could be sufficiently ameliorated by the enactment of pending legislative proposals requiring "truth in disclosure" of automobile financing, is a matter which the Congress should consider and resolve.

Mr. McCULLOCH. Mr. Chairman, I would like to ask Chairman Dixon if he looks with favor upon the last proposal which he has just discussed.

Mr. DIXON. Truth in disclosure? Sir, I have always held to the proposition that in democracy we cannot live except by truth. I think that if it can be sensibly worked out and legislated, that it would be a highly desirable thing. I speak purely personally, sir.

Mr. McCULLOCH. Chairman Dixon, I am very glad to hear you say that.

Mr. MALETZ. Mr. Chairman.

Mr. Dixon, do you believe that the affiliation of GMAC with General Motors gives General Motors a competitive advantage over competing automobile manufacturers?

Mr. DIXON. I am now speaking individually?

Mr. MALETZ. Yes.

Mr. DIXON. Not reflecting the views of the other members of the Commission, I have no doubt, sir, that it does.

Mr. MALETZ. Do you feel that the affiliation of GMAC with General Motors gives GMAC a competitive advantage over GMAC's competitors?

Mr. DIXON. I think the record speaks for itself. I think that would be a logical conclusion to be made, sir.

Mr. MALETZ. You believe that GMAC, by virtue of its relationship with GM, has a competitive advantage over competing companies?

Mr. DIXON. I do, sir, certainly with respect to the sale of General Motors cars.

Mr. MALETZ. Now you have a structural problem here, have you not, in your personal view?

Mr. DIXON. Yes, sir; we have a structural problem, and I know this committee—

The CHAIRMAN. Will you speak a little louder, please.

Mr. DIXON. I certainly shall, sir. We do have a structural problem here, as Mr. Maletz has pointed out, and we have a problem that further is scrambled a bit by the history of the cases that I have referred to in the statement that Judge Loevenger spoke about and you questioned him about.

I know you are familiar with the testimony that was given before the Senate Antitrust and Monopoly Subcommittee on the Judiciary in the 1st session of the 86th Congress. This testimony occurred and was given in February and April 1959, and I was counsel of that subcommittee when we were considering, if not an identical, a similar bill to this bill which you are having hearings on here today.

I was particularly impressed by the testimony and evaluation of the legal situation as outlined by Judge Arnold when he appeared before that subcommittee, and I would commend certainly to this committee for inclusion in its hearings, or certainly for study.

For instance, on pages 269 and 270 of those hearings, Judge Arnold makes this statement, after he had reviewed the history of the lawsuits and what was involved, at the bottom of page 269 he states this:

Like all other cases where the doctrine of *res adjudicata* applies, the consent decree is binding only on the parties. In an antitrust suit brought by private parties, the decree would not be a bar. But the decree stops any further lawsuits by the Government and all the courses of action which were in issue in this suit. The reason why General Motors is immune from Government prosecution for divorcement of GMAC is that it was sued both under the Sherman Act and section 7 of the Clayton Act. There is no new cause of action which can be brought by the Government against GM, seeking its divorcement from GMAC.

Now as this testimony developed, that Judge Arnold was giving, he pretty well conceded the proposition that perhaps in a border-type suit that Judge Loevenger was talking about, that perhaps something could be done about this situation, but that it would take an unholy length of time and untold difficulties to prosecute such a suit.

And so the problem is if it is to be resolved, it might be said, if this was a checker game it has been moved back to the Congress, and it is before the Congress, and it is the decision for the Congress.

Mr. MALETZ. Mr. Dixon, what is your personal position on this pending legislation?

Mr. DIXON. Sir, I have spent a great deal of my life studying concentration, monopoly problems, and in the antitrust field. Certainly, the automobile is one of the very highest concentrated industries.

General Motors, I believe—I don't know the exact figure—I would say they would manufacture somewhere between 40 and 50 percent of all the passenger automobiles and a larger percent of the trucks.

Now, historically they have had this family arrangement of wholly owned subsidiary GMAC. Whether coercion is being presently used or not, this family arrangement is in being.

I am not prepared to say exactly what percentage of all General Motors or General Motors automobiles are financed through GMAC. I am sure this committee will obtain that from the witnesses that are going to follow.

But I would say it would be rather large, based upon the number of cars that they manufacture, and discounting the ones that are sold for cash and those that are sold by the people that buy them and who use their own financing, I would think that they have a very large percentage.

I do not believe they finance automobiles for anybody else other than General Motors. I think the hearings, the record that we heard, disclosed these facts. And I would say to you that General Motors, using this avenue to sell their automobiles to the consuming public, that as long as that arrangement exists, there will be little chance of any competition creeping into that part of the market.

Now since the hearings were started before the Senate in 1959, the Ford Motor Co. has gone back into the business, so I am informed. How far along they are I do not know, but I would believe it would take some number of years for them to build a successful operation.

Now if the picture was bad in 1959 when only GMAC was in it, it is not going to be improved with the Ford Motor Co. coming in.

I would understand also, for instance—what is the name of the company that makes Ramblers—American Motors, although they don't have a finance company today for financing their automobiles, they have one to finance their refrigerators. There is nothing in the law that will keep them from coming into the field with this same relationship, and it will be nothing to keep Chrysler from coming back into it itself.

And I would say as a matter of fairness to that, that as long as GMAC can serve General Motors in this relationship, it is rather difficult for me to understand why they shouldn't be allowed to be in themselves.

I think this is a very fair evaluation that the Congress is going to have to look at, and in view of the procedural difficulty, the question of res adjudicata that now exists in this very area, I would not be remiss if I did not say personally that perhaps if the problem is to be solved, it must be resolved by the Congress or it will not be resolved for years and years.

Mr. MALETZ. I take it that you come to that conclusion in light of the fact that it is the congressional responsibility to regulate the commerce of the United States.

Mr. DIXON. Mr. Maletz, the Congress is the only person that has this responsibility. Article III, section 8 says that Congress shall regulate foreign and interstate commerce. It doesn't say anybody else shall do it, unless you delegate the responsibility to them. This is your decision in my opinion, if you make this decision.



Mr. MALETZ. You have just made reference on page 4 of your statement to a bill providing for truth in disclosing credit transactions. Are you referring to the Douglas bill?

Mr. DIXON. That is what I had in mind.

Mr. MALETZ. Would the passage of the Douglas bill ameliorate the present structural problem existing as a result of the GMAC affiliation?

Mr. DIXON. No; it would not ameliorate the structural problem. I don't know what effect it would have.

During hearings that we held at the Senate Antitrust and Monopoly Subcommittee held on the automobile industry as such, we called before that committee automobile dealers, and we asked questions on the cost of financing.

If my memory serves me, I believe that the average cost of the financing of a Chevrolet automobile to a consumer runs something like 26 percent on a 3-year note. Now this involves not only interest but the service charge and the credit life insurance and the insurance on the automobile.

I think it would be interesting if the public really knew what they were paying for this package, because I think this may be on the low limb, the 26. I think it may be considerably higher in others parts of the country.

Mr. MEADER. Mr. Dixon, on page 4 of your statement, the second paragraph:

The Commission has made no special economic studies to determine whether any advantage would flow to the public if the legislation is passed.

Now I would like to have you develop that, if you might, just what would be entailed in the making of such a study, and why no such study has been made, if you know the reason.

Mr. DIXON. Well, the study which I alluded to was made as a result of a resolution of the Congress.

Now if you will note that immediately after this study was published in about 1939, the lawsuits were filed in 1938, they were not resolved until 1952, eventually.

No study has been made since then, although the Congress of the United States, the Senate Antitrust and Monopoly Subcommittee, made a study of this in 1955-56, and this very legislation was introduced, and hearings were held on it in 1959, and I believe in 1958 or 1959 we held a study of the whole automobile industry.

It would not be remiss, and it would not have been proper in my opinion for the Federal Trade Commission to have jumped into that picture at that time, in view of that history and what was going on, and as of this day, no other study has been made of it.

Mr. MEADER. In other words, you would suggest the possibility that Congress might pass a resolution similar to the one before which resulted in your study?

The CHAIRMAN. Wait a minute.

Mr. DIXON. I think there has been a lot of studies, Mr. Congressman. I don't know what would come out if we made another study. It would take some time.

The CHAIRMAN. May I just interrogate if you will yield? Is it not true that the Senate committee made an exhaustive study and a report on this very matter?

Mr. DIXON. They did, sir. That is what I said. In other words, as late as 1956 they made an exhaustive study on this very question.

Mr. MEADER. I am thinking particularly, and I emphasize that it is not just any old study I am talking about, but they made no special economic studies to determine whether any advantages would flow to the public.

Now to me that is one of the central issues in this legislation, and we ought to have some light on it. We certainly ought not to act hastily and base our judgment upon hypotheses that may not be true, and find that we have actually harmed the consumer.

Now I would like to know if the Federal Trade Commission could conduct such an economic study, what would be involved in terms of time, manpower, and expense, how you would go about it.

Mr. DIXON. Congressman, in the first place, I think if we made an economic study we would have to go back to thing that have already occurred and information which is available to you.

But I listened to the question you asked Judge Loevinger, and I wondered how I would try to answer it if you asked me, that is if this bill is passed what guarantees are going to accrue to the public and maybe prices will get cheaper.

You could ask yourself that question about the whole theory of competition. Competition does not decree that prices in and of themselves are going down, but the time is there where it might happen. Now today the climate is not in this industry where it is likely to happen with this structural relationship existing.

I have heard it argued pro and con, and I know when you hear from the various sides of this industry, as they come along, they are going to give you information on this point. But I do not know who could look in a crystal ball today and predict with due certainty to you that, if you pass this bill, the price of financing a given automobile will be cheaper to a given member of the public in Podunk Corner, X State, you see.

All I know is that we have plighted our troth in this country upon the theory that we will exist better not under cartels but in a climate of competition.

The CHAIRMAN. And do you personally believe that the passage of this bill would increase competition, and that one of the effects would be to decrease rather than increase the price of cars to the consumer?

Mr. DIXON. Mr. Celler, I have a deep and lasting belief that that is the inevitable of competition, that the fruits of competition are, something is going to eventually cost less to the public. If that does not happen, you will find people very often creeping under an umbrella and conspiring.

Today here what you are talking about in this bill—today there is one large, the very largest automobile manufacturer that has this structural relationship and ownership, an exclusive ownership of a finance company, and the second largest is coming into being again with another.

Mr. McCULLOCH. Mr. Chairman, might I ask a question?

Mr. MEADER. He hasn't quite answered the question about the economic study. I gather from what you are saying now that if you did make such an economic study, it wouldn't prove anything?

Mr. DIXON. I don't think that it would answer your specific question to forecast the future results of competition, because we have a type of competition in this country that is existing—we have chosen to call it administered prices—where there is no difference in price whatsoever in an industry anywhere in the United States.

We can attack it if we can find conspiracy. This is clear. But if it is follow-the-leader, no thirst for competition, the public is not getting the benefit. This is a major problem confronting the Congress and this country.

But if you pass this bill and you place the people in this relationship to where they are free to go after any of the business, the question you would like to have answered it, Would one of them be beneficial enough to the public to reduce rates?

I can't answer that question.

Mr. MEADER. And you don't believe that if the Commission undertook a special economic study, that question would be answered?

Mr. DIXON. I do not, sir. I do not think it would be answered.

I think you can answer it if you look at it after it happens. I think that to predict it we have got to predict that this our system, our social system, our system of government and philosophy, that we get the best to the public by competition. And wherever you create a climate where competition can grow, the public is better benefited.

Mr. McCULLOCH. Mr. Chairman, I would like to ask Chairman Dixon this question: When you were directly concerned with this problem and were studying it in the Senate, did you find that there was very great competition for financing automobiles, both new and used?

Mr. DIXON. Sir, I will say that we got to the point over there of not being able publicly to find anything.

We came to the proposition of ending these hearings and proposing a report and a finding, and although they reported this bill up to the full committee, it died in the full committee before the Congress died itself.

Mr. McCULLOCH. Adjourned. But let me ask you this specific question, then: Didn't you at that time find that there was increasing competition from State and National banks for this paper?

Mr. DIXON. Well, what was left? What was left, sir?

Mr. McCULLOCH. Do you recall, Chairman Dixon, about what percentage of all automobile credit was furnished by State and municipal banks at that time?

Mr. DIXON. I have a difficulty; I did not have a chance to review this written record.

Mr. McCULLOCH. I understand that.

Mr. DIXON. And I did not have access to the confidential report where we had the statistics over in the Senate, so I am not sure, sir.

But I think that you are going to find this out when you hear from the representatives of the independent financiers and perhaps from General Motors itself, and Ford itself. I think they will give you very reliable figures.

Mr. McCULLOCH. Well, if those figures should show that State and National banks, for instance, were financing from 40 to 45 percent of all the paper in this field, would that be substantial competition, in your opinion, for this business?

Mr. DIXON. Well, sir, I am most impressed with what I saw in 1933, when we held those hearings, either in that year or the year before.

I believe my memory is correct that GMAC after taxes made \$53 million profit. This was more than half of the total profit that the Ford Motor Co. made on its total operation that year.

Now, I would say to you that this indicates to me two things: That they were doing very good business, and maybe they would make more money out of financing than they do making automobiles; I don't know, because I heard later, when we were examining the automobile industry itself, we were studying that, we had a dealer there that made this categorical flat statement to us, that the only reason he was in business today was that he was existing upon the kickbacks that he, as a Chevrolet dealer, got from GMAC for acting as their agent.

Mr. McCULLOCH. Yes. I would like, however, to repeat the question that I asked you. If the evidence which is finally presented to this committee establishes that State and National banks are financing from 40 to 45 percent of all the installment sales of automobiles, would that, in your opinion, amount to substantial competition?

Mr. DIXON. Certainly this business of financing new automobiles and trucks—

Mr. McCULLOCH. Chairman Dixon, I would be glad if you would answer that, and then you may explain at length.

I again would like to know whether 40 to 50 percent of all the business in this field, if financed by State and National banks, would, in your opinion, result in substantial competition?

Mr. DIXON. I think it is the result of what happened in the lawsuits, sir. I think that in—

Mr. McCULLOCH. Well, do you think that is competition, or what is it?

Mr. DIXON. Obviously it is competition, because they are banks and they are independent finance companies out vying for what is left.

The CHAIRMAN. Here is what the Senate study revealed, and I am reading from page 70. This concerns banks also.

Page 70, the first paragraph:

The record clearly shows that insofar as financing is concerned, there is a General Motors market and a non-General Motors market; that GMAC effectively controls the General Motors market to the exclusion of other finance companies and banks.

None of the competing finance companies have been able effectively to operate to any large extent in the General Motors market either at wholesale or at retail.

Mr. McCULLOCH. Mr. Chairman, I would be very glad to have all of the information with respect to that conclusion in the Senate report spread on the record, particularly in view of developments of the last few years.

The CHAIRMAN. Counsel might well examine those volumes and put that testimony in the record.

Mr. RODINO. Mr. Chairman, I merely would like to make this observation. We recognize that there are yet automobile manufacturing companies like Chrysler, Studebaker, Packard, and American Motors that do not have finance subsidiaries. What if these companies should now, as a purely defensive measure, undertake to go into the financing field?

What happens to competition then?

Mr. McCULLOCH. It probably would be increased to the benefit of the consumer.

Mr. DIXON. The rest of my statement, I think, could just be included because they are just technical suggestions for the bill.

The CHAIRMAN. Go ahead.

Mr. DIXON. I would make only one other personal suggestion to you.

I heard the question asked about class legislation and whether it is constitutional or not. And I know you are aware of this. One of the bills that was considered by the Senate was S. 839. I think Senator Kefauver put that bill in, and it has as part of the bill what I would call legislative findings, section 2-A of the bill were findings of fact and declaration of purpose.

It might be considered by the committee as to whether or not they thought it might be for future interpretation as to whether it would be wise to make a legislative finding in this legislation to help guide the Supreme Court if anyone ever were to raise the question in the future.

The CHAIRMAN. Your entire statement will be placed in the record.

Thank you very much, Mr. Dixon. We always appreciate your statements. They have always been very helpful.

Mr. DIXON. Thank you, sir.

The CHAIRMAN. As I said to Judge Loevinger I say to you, you are always welcome.

Mr. DIXON. Thank you.

(Mr. Dixon's prepared statement follows:)

STATEMENT OF PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION, BEFORE THE ANTITRUST SUBCOMMITTEE, HOUSE COMMITTEE ON THE JUDICIARY, JUNE 8, 1961

I appear today at the request of the chairman of this subcommittee to present the Commission's views on H.R. 71, a bill to prevent automotive manufacturers from financing and insuring the sales of their motor vehicles.

The bill would make it unlawful for any corporation engaged in the manufacture and sale in interstate or foreign commerce of motor vehicles to (1) own or maintain any facilities for financing the sale at wholesale or retail of the motor vehicles manufactured by such corporation or (2) to own or maintain any facilities for issuing insurance policies of any kind in connection with the sale or purchase of motor vehicles manufactured by such corporation.

If this bill were enacted into law, it would be enforced by the several district attorneys of the United States in the district courts, under the direction of the Attorney General, by the institution of suits to enjoin violations of the act.

The Commission is aware of the antitrust problems involved in the ownership by an automotive manufacturer of financing and insuring affiliates. In 1939, the Commission made a comprehensive report on the motor vehicle industry. This report, which was printed as House Document No. 468, 76th Congress, 1st session, discussed in detail the then current practices and policies of automotive manufacturers with regard to the financing and insuring of cars as well as many other aspects of the automotive trade. The inquiry was made pursuant to Joint Resolution 87 of the 75th Congress.

This report makes clear some of the difficulties which have occurred in the automotive industry. It speaks, for instance, of the pressure exerted upon dealers to use a particular finance company. The report states such pressure was of varying intensity and was exerted by methods ranging from persuasive salesmanship to threats of cancellation of a dealer's franchise.

This kind of activity, we believe, will inevitably affect competition from nonaffiliated firms which seek to finance or insure automobiles. In a business so highly concentrated as the automotive industry, a tie-in between a manufacturer and a financing or insuring company can substantially eliminate the competition which might otherwise exist from outside firms. The proposed legislation is calculated to effect a complete separation between the automotive manufacturer and its financing or insurance affiliates so that the possible adverse competitive effects cannot take place. In other words, if the automotive manufacturer has no financing or insurance affiliates, there will then be no question

as to the availability of such business to the many concerns engaged in finance and insurance.

In May 1938, General Motors Corp., Ford Motor Co., and Chrysler Corp. were each indicted on the charge that the automotive manufacturer had combined and conspired with its affiliated finance company or companies to restrain trade and commerce in the wholesale and retail sale and in the financing of its automobiles in violation of the Sherman Act. Chrysler and Ford entered into consent decrees in 1938 and the criminal cases were quashed. Criminal proceedings against General Motors resulted in conviction in 1939. A civil suit for injunction was instituted against General Motors in 1940, and a consent decree was entered in 1952.

The consent decrees have an important bearing upon the need and desirability of the proposed legislation. I will not go into the subject in detail, except to note that each decree imposes restraints upon discriminatory practices as between the automotive manufacturer and the finance company. It is my understanding that the decrees do not prohibit the acquiring or retaining ownership of any finance company.

This then brings us to the subject of whether there should be legislation to go a step further than the decrees and require the complete separation of the various businesses. The proposed legislation would also require the separation of insurance affiliates.

This is a matter on which the Commission has made no special economic studies to determine whether any advantages would flow to the public if the legislation is passed. In fact, the Commission has made no general inquiry or study of an economic nature into the automobile industry since its report of 1939.

The Commission recognizes the serious problems involved in the area covered by the proposed legislation. The resolution of these problems involves the determination of broad economic antitrust policy by the Congress. It is to be noted that the bill calls for legislative divestiture of their finance and insurance companies by automotive manufacturers. Whether so drastic a remedy is necessary at this time or whether the existing situation could be sufficiently ameliorated by the enactment of pending legislative proposals requiring "truth in disclosure" of automobile financing, is a matter which the Congress should consider and resolve.

The following comments relate to specific language used in the bill.

The first section of the bill (unnumbered) contains a definition of "commerce" which covers both foreign and interstate commerce, but section 2 refers to corporations engaged in the manufacture and sale "in interstate or foreign commerce." In view of the definition of "commerce" contained in the first section, you may wish to strike the words "interstate or foreign" from section 2.

Section 2 contains the phrase "any corporation, its subsidiaries, officers or employees, engaged in the manufacture and sale in interstate or foreign commerce of motor vehicles." [Italic supplied.] It is unclear as to which of the preceding words the italic clause applies. If the following properly reflects your intention, you may wish to revise the phrase to read: "any corporation engaged in the manufacture and sale in commerce of motor vehicles, or any of its subsidiaries, officers, or employees."

The title of H.R. 71 suggests an intended application to manufacturers only, but section 2 of the bill extends its coverage to "any person or corporation which acts for and is under the control of such corporation." This phrase could be construed to cover dealers, since in certain transactions such as the administration of a manufacturer's warranty, dealers may be said to act for and under the control of the manufacturer. For clarification, you may wish to consider insertion of the phrase "with respect to financing or insuring of motor vehicles" immediately after the word "corporation" on line 9 of page 2 of the bill.

Inasmuch as the phrase "antitrust laws" is not always construed to include the Federal Trade Commission Act, it would be appropriate to insert, "including the Federal Trade Commission Act" at the end of section 5 of the bill.

In conclusion, I wish to express the appreciation of the Commission for this opportunity to comment upon H.R. 71.

The CHAIRMAN. We have two more witnesses. I hope they can be very brief because we would like to terminate the hearings very shortly for the day.

Mr. Louis Werner, of Peat Marwick Mitchell & Co., Chicago, Ill.  
Mr. Werner?

**STATEMENT OF LOUIS WERNER, PEAT MARWICK MITCHELL & CO., CHICAGO, ILL.; ACCOMPANIED BY GEORGE OMACHT**

Mr. WERNER. I am here, Mr. Chairman.

I was planning to use three of the charts used by Mr. Cassat yesterday. They are on the easel over there.

The CHAIRMAN. How long will you take?

Mr. WERNER. Not more than about 10 minutes. I am a partner in the public accounting firm of Peat Marwick Mitchell & Co. having become a partner when that firm combined about 2 years ago with the firm of Baumann, Finney & Co., a firm with which I had been a partner since 1942 and had previously been associated since 1931.

Bankers and people in the finance industry will tell you that our firm was the leading accounting firm in the finance field. We had approximately 60 independent finance companies as clients, and I personally have spent the major portion of my time for the past 25 to 30 years auditing and working with independent sales finance companies.

In my professional capacity as a public accountant, I don't have an opinion on H.R. 71, and I propose to confine my statements to the comparisons in the charts that were presented yesterday, particularly those having to do with the factor of leverage.

And, incidentally, I had nothing to do with the preparing of the charts.

Leverage or the relationship of debt to capital, is an important factor in any business, particularly business involving the use of money. The more that you can borrow the more business you can do, and accordingly the greater the return on invested capital.

In the case of an independent finance company, you might say there are three limitations on the extent of its borrowings.

The smaller companies have difficulty obtaining sources of funds of any kind. In all companies management gives consideration to how far they feel they should go from the standpoint of pyramiding borrowings in relation to capital. And most specifically the larger independent finance companies, which obtain their funds from institutions and from large banks, find that their lenders impose limitations in the form of provisions in their borrowing agreements and indentures which restrict their borrowings in proportion to capital.

I am not personally familiar with the indentures which GMAC is bound by, but I do work with independent finance companies and their indentures all of the time, and I am familiar with the restrictions their agreements contain, which usually include limitations on borrowings in relation to capital.

The use of a 9 to 1 ratio, as being representative of a typical independent sales finance company, is a reasonable one.

Turning to the three illustrations; in the first illustration of a company with no borrowings, obviously in this business such a company is not economically able to compete.

Incidentally, these three illustrations all assume that operating costs per unit of funds are identical, for purposes of simplicity.

When a company operates with no borrowings, its cost of funds is 41.67 percent before income taxes, and, in effect, it has to add \$41 per thousand dollars outstanding per year to merely overcome the cost of funds.

In the case of company B, borrowing at the ratio of 9 times its capital, is more typical of an independent finance company, and its average cost per unit of capital is 7.76 percent, which translated into dollars means that it has to add \$77 to each thousand dollars employed per year to achieve the profit target of 20 percent and cover its interest costs.

In the case of company C, which hypothetically borrows at a 19 to 1 ratio, with the same interest rate as the 9 to 1 company and the same profit target of 20 percent, its per unit cost works out to 5.88 percent of capital employed, which means that per thousand dollars of capital employed for a year, it has to add \$58 to cover its capital costs.

Such a relationship of 19 to 1 is one that you don't find in the independent sales finance companies, because they are not permitted (at least none of them that I have ever seen have been permitted) by their lenders to use that much borrowed capital.

Mr. MALETZ. Mr. Chairman?

Mr. WERNER, the subcommittee now understands that the subordinated debt agreement, to which you are in effect referring, between GMAC and various lending institutions has been modified so that regardless of GM ownership or nonownership of GMAC, there is only one maximum.

Had that come to your attention?

Mr. WERNER. It had not come to my attention before your reference to it earlier today.

Mr. MALETZ. Would that change the picture that you are now presenting?

Mr. WERNER. That would change it only if the maximum were reduced in such a way as to prevent GMAC from borrowing to the extent that it already has borrowed.

Mr. MALETZ. In other words, as I understand it, the crucial test is whether GMAC in this modified subordinated debt agreement would still be able to borrow on a ratio of 19 to 1; is that correct?

Mr. WERNER. That is correct.

Mr. MALETZ. May I ask you this also: General Motors submitted a statement before the Senate Antitrust Subcommittee pointing out that it is at a financial disadvantage due to its ownership by General Motors on the basis that if it were not a subsidiary of General Motors, it could qualify for a line of credit of approximately \$300 million; that this result follows from the fact that loans extended by National and certain State banks to a corporation and its subsidiaries as a group are limited by law to a maximum of 10 percent of the combined capital and surplus of the bank.

Now, in view of this, General Motors argues, the line of credit is for practical reasons offered by a given bank in toto to the parent General Motors and General Motors in turn allocates the total among itself and its subsidiaries.

General Motors also argues that for a number of years GMAC has participated in these combined lines of credit to the extent of only 50 percent while independent sales finance companies would have full 100 percent availability.

Do you follow this argument of General Motors?

Mr. WERNER. Yes, sir.

Mr. MALETZ. What is your comment?



Mr. WERNER. Theoretically, it may have some merit, but at the present time it is a purely academic argument to make, inasmuch as GMAC from its latest published statements is using very little of its banks loans, due to the fact that in the present money market it can borrow money in the open market at lower rates than it can borrow money from the banks from whom it has bank lines.

Mr. MALETZ. But do you believe that, as a theoretical matter at least, GMAC is at a financial disadvantage in terms of bank borrowings because of its being a subsidiary of General Motors?

Mr. WERNER. Only theoretically—if it used up all the bank lines that were available to it, and therefore if these limitations actually were effective, if such a state of affairs were ever to exist.

The CHAIRMAN. It would have the power nonetheless to allocate all the credit it receives, every dollar's worth of credit to GMAC if it wishes, it has that power?

Mr. WERNER. Apparently it does.

The CHAIRMAN. And it doesn't have to use any of the credit for the manufacture of cars but it could use all the credit it gets for the financing of the cars?

Mr. WERNER. That is my understanding of the arrangement.

The CHAIRMAN. When they tell us that the situation has changed, it doesn't change their power.

Mr. WERNER. I don't believe that it does.

Mr. MALETZ. Even though this advantage which you say is theoretical rather than real, isn't it a fact that because of this relationship that GMAC loses capacity, borrowing capacity, in the commercial paper market?

Mr. WERNER. I doubt that that is true. It is my understanding, that under the standards that are applied to independent finance companies, that might be a true statement, but it is my understanding from the testimony here that similar standards are not applied to GMAC.

Mr. MALETZ. In order that I understand your testimony, even though the subordinated debt agreement has been modified in a way which would not make GMAC's borrowing capacity dependent upon its affiliation with General Motors, so long as GMAC is able to borrow under its loan agreement at a considerably higher ratio than its competitors, to that extent, GMAC competitors are placed at a considerable disadvantage.

Is that the import of your testimony on this point?

Mr. WERNER. Yes.

Mr. Chairman, I would just add one more point with relation to these charts. The reason for the lower average cost for company C as compared with company B is the fact that each company is averaging interest cost at 4 percent or 4-percent money with what you might term 41-percent money, capital on which it is trying to make a 20-percent profit after tax.

Whether you use the 20-percent profit return or a 10-percent profit return or a lesser profit return, so long as you use the same target in the case of both companies, the before-tax costs of capital is much higher than the interest cost on debt, which is tax deductible. Accordingly, a company which mixes interest-cost money with capital-cost money in the ratio of 19 to 1 will have a lower average cost than a company which has a 9-to-1 mixture, and in the sales finance busi-

ness a company with a rate differential 2 percent in capital cost, if you measure these two ratios of 76 and 5.88 has a very competitive advantage.

I think this is apparent when you consider that the annual reports of GMAC indicate that its interest expense is greater in dollars than the total of all other of its operating expenses.

The CHAIRMAN. Thank you very much, Mr. Werner.

This will terminate the testimony of witnesses for today.

We have another witness, David B. Steere, president of Allied Finance Co., who apparently has agreed to testify at a later date. His testimony is very important, and I think it would be well to have him appear at a subsequent time.

The hearing will now adjourn until tomorrow morning at 10 o'clock when we shall hear the following witnesses:

Representative Wright Patman of Texas; Charles G. Stradella, chairman of the board of GMAC, Detroit, Mich.; Frederic Donner, chairman of the board, General Motors Corp., Detroit; F. W. Misch, vice president, finance, Chrysler Corp., Detroit; Harold Halfpenny, Automotive Services Industry Association of Chicago.

We will now adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 10 a.m., Friday, June 9, 1961.)



## AUTO FINANCING LEGISLATION

FRIDAY, JUNE 9, 1961

HOUSE OF REPRESENTATIVES,  
ANTITRUST SUBCOMMITTEE  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Toll, McCulloch, and Meader.

Also present: David B. Cassat, president, Interstate Finance Corp., Dubuque, Iowa; and Paul Jones, chairman, executive committee, American Finance Conference.

Herbert N. Maletz, chief counsel; William H. Crabtree, associate counsel; and Herbert Fuchs, assistant counsel.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is our distinguished colleague, the gentleman from Texas, Representative Wright Patman, who always gives us words of wisdom.

We are glad to have you here.

### STATEMENT OF HON. WRIGHT PATMAN, A REPRESENTATIVE IN CONGRESS FROM THE FIRST CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS

Mr. PATMAN. Thank you, sir.

Mr. Chairman, I think this is a good bill because it will restrain monopolistic practices and permit continued survival of locally owned business institutions in our Nation's communities.

One of the country's biggest problems is the weakening and even the destruction of the economies of our local communities. This practice of permitting automobile manufacturers to own and control the financing of the product they manufacture is further evidence of the fact that the Main Streets in the communities of our Nation are being run by Wall Street. It is further destruction of free competition in private enterprise and must be halted if the smaller communities of our country are to have vigorous and prosperous economies to support the daily needs of community life. A continuation of the present practice will probably result only in a great clamor and demand from our cities for further Federal aid.

## BANKERS SILENT

We have been depending upon our commercial banking institutions to supply the financial lifeblood needed by our communities. We have looked to them as the source of funds to supply our business and personal needs.

Now it is time to see whether they have acted with vision for the future and in the public interest of the communities they are intended to serve or whether their actions are based on shortsightedness and the lust and greed of the moment. I am afraid the testimony heavily favors the latter.

I understand that the committee has had some correspondence from individual banks, and that most of them favor passage of H.R. 71, while a few are opposed, but that none of them thus far has offered to testify.

But I am stunned to learn that not one word has been heard from either the American Bankers Association or the Independent Bankers Association. I am amazed that these big associations that represent the banking institutions of our entire Nation are not here in wholesale numbers clamoring for passage of this legislation.

If the top-ranking officers of these powerful and influential associations cannot foresee the crippling effects of monopolistic combinations on the health of the economy, they should be here in numbers demanding approval of this bill for the selfish protection of their own institutions.

Banks are organized and operated to make profits, of course, but they also are chartered and permitted to exist to serve the public in their local communities. I am concerned that too many banks no longer fully perform this public service but invest their resources in Government obligations and other securities far from their local areas.

The bleeding of funds from local banks and from local finance companies also bleeds the communities of the revenues they need to grow and prosper. It is one of the factors that is drying up normal community life.

It is not just an invitation for further aid to local areas, it is a case of forcing the Federal Government with a vengeance to take all local opportunity away from communities and supply further assistance in such services as old-age pensions, depressed area assistance, aid to education, and whatever else local governments no longer have the financial sustenance to provide themselves.

Our economy tends to veer more in that direction continuously. I hope the Congress will act to stem this trend and help local communities retain their profitable businesses so they can take care of, if possible, their local obligations to education, and these other needs.

Finally, Mr. Chairman, I want to make it clear that I am not addressing my remarks toward any single automobile manufacturing company. I don't want any of them to enjoy this monopolistic manufacturing-financing "sacred cow" privilege.

Another thing, Mr. Chairman, the automobile dealers should be in here fighting this bill. I know it is a fine organization, and in all the cities throughout the Nation the franchised owners are among our finest and best citizens.

I am sure there must be a difference of opinion among them. But clearly their side on this is in favor of this bill because if these auto-

mobile manufacturers are not stopped, the defeat of this bill would mean a firmer grip upon the throats of all the automobile dealers in America.

In some instances the company financing sales of automobiles makes more money from financing them than the automobile dealers that handle the cars.

Another thing, Mr. Chairman, we already have too many of the business moneymaking opportunities taken away from local communities.

How are you going to resist Federal aid to education, Federal aid to everything, if local people no longer have the opportunity to take care of themselves?

The moneymaking opportunities are gone. They are owned by absentee owners. This bill would stop part of that and retain moneymaking opportunities locally.

When local people have these opportunities, they put their profits in the local bank, and these dollars become reserves that may be expanded upon 10 to 1, and more, for the purpose of developing and helping the people in that area. In that way they can kind of take care of themselves.

But if you more and more take away the business moneymaking opportunities from the local communities, more and more they will have to come to the Federal Government for aid. And these people who are doing all this, taking all the moneymaking opportunities away from the towns and cities of America, had just as well realize now that the Federal Government is going to follow those dollars.

The Federal Government is the only one that has the power to do it, the only one that can effectively do it, and bring part of these dollars back to the local communities from whence they came, in order to take care of local needs in that community.

So I do not think it is a good thing for America. It is a bad thing for America.

If we have an America of little businesses locally owned and locally controlled and decisions made locally, we have a strong America.

But every time you take away from these local communities that strength, you are making it more fertile for socialism, communism, or fascism.

But the way to keep America strong is to keep it strong at the local level, to let local people have moneymaking opportunities, and then local people can take care of many of their needs, and they will not have to come to the Federal Government for assistance.

Now, may I suggest, Mr. Chairman, a few thoughts to the committee for their consideration in the study of this important bill.

As it presently stands, the bill prevents General Motors and other manufacturers of motor vehicles from owning or maintaining financial and insurance facilities only if they are used in connection with the sale of motor vehicles, defined to include, of course, passenger cars, trucks, buses, and station wagons.

General Motors, therefore, could still finance, on its own, the sale of locomotives or diesel engines or refrigerators. Should not this be prohibited also?

The bill makes it unlawful for a motor vehicle manufacturer to own or maintain any facilities for financing or insuring in connection with the sale of motor vehicles. But does this mean that such a manufac-

turer could not own stock in such a financial entity or have interlocking directorates?

If it might be so interpreted, Mr. Chairman, I would urge that any such relationships be expressly banned. In other words, I think it should be dealt with affirmatively. This committee might well give attention to the wisdom of extending this type of legislation to all sales situations, whether of motor vehicles, as herein defined, or otherwise. Should not any large sales organization be prohibited from financing its own sales?

Now, how do we know this bill will help the consumers? I know that is a question that is often asked in all hearings of this type, and I have been in some of them myself. Someone invariably raises this question whenever we make efforts to strike down monopoly. My answer to this question is this:

To me the past history of GM offers persuasive evidence that it has had market power. There is also evidence that GM has used this market power to its advantage and not the public's, contrary to one prominent former GM official's declarations that what is good for GM is good for the country. The question whether this legislation is good for the consumer goes back to the basic issue of whether we really believe a competitive economy is preferable to a monopolistic and cartelized one.

This may seem like a dogmatic statement to some, but I sincerely believe that the positions various persons eventually take on this bill will separate those who believe competition is best for America from those who believe monopoly will serve America best. It is as simple as that.

And if GM, Ford, Crysler and these other big automobile manufacturers are permitted to continue this, they will have a captive market. It has many ramifications. It affects the local economy in many devastating and destructive ways, too many to be mentioned here.

The chief issue here is one of market and financial power and their use. GM is a vast conglomerate enterprise. By engaging in financing as well as manufacturing, it is in a position to extend forward this vast power to the distribution level. This not only harms competition at the distribution level, thereby harming other independent automobile distributors and independent financing agencies, but by expanding its position at the distributor level, its already dominant position in manufacturing is further entrenched and enhanced. Hence, power is used to increase power. Power feeds on power.

The end result is clear: overwhelming dominance and complete monopoly. GM's market behavior will then be curbed and the public interest protected only insofar as the holders of this power decide that they will exercise it in the public interest. This makes a mockery of our free enterprise economy. Good performance then becomes a gift of benevolent holders of vast economic power.

Unless public action is taken to limit and prevent the achievement of such power, the only alternatives to monopoly are, one, turn the country over to GM, or, two, turn GM over to the country. Both alternatives are abhorrent to me. We must make every reasonable effort to preserve competitive market structures which will demand desirable social performance. Action is called for now. This is too urgent a matter to put off for another decade or more. The country cannot afford further delay.

I hope your bill becomes law, Mr. Chairman.

The CHAIRMAN. Mr. Patman, you spoke of the automobile dealers. It is interesting to note that we have received quite a number of communications from automobile dealers, and most of the dealers indicate that they are opposed to this bill.

Now, in relation to this, I draw your attention to the fact that the General Motors Corp. under date of May 18 sent a communication to all General Motors distributors and dealers wherein are set forth its reasons for their opposition to the bill, and enclosed a summary of General Motors' statement on Senate bills S. 838 and S. 839 which are similar to the one I offered, filed with the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary of the U.S. Senate on February 27, 1959. General Motors urged the dealers to read carefully the statement of position of the General Motors Corp., and then added significantly on the second page of the letter:

Should you decide to take a position at this time, may we suggest that you communicate with your Senators and Representatives in Congress and also with the Antitrust Subcommittee of the Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

You will note, "May we suggest that you communicate." What would you say, from your long experience as a Representative, as to the effect of this suggestion from a corporation like General Motors to its dealers?

Mr. PATMAN. Well, to some extent, the dealers are captives now. This will leave no doubt about their captivity.

This will put a firmer grip upon their throats by the automobile manufacturers and put them more under control than they are now. Now, they are independent, and I am glad to see them independent. They have performed a greater service for our country both in time of peace and in time of war.

I am strong for the independent automobile dealers, but I am very much disappointed that they are not here fighting to protect America's interests while they are protecting their own.

The CHAIRMAN. Would you say that the "suggestion" contained in the letter of General Motors Corp. to its dealers is something in the nature of a command?

Mr. PATMAN. Well, it is a sanction. It is something that will be persuasive, not only persuasive but effective.

I can see why the dealers are not here now, because that is almost a mandate to them to stay out of this fight, and by staying out are acting in the interests of defeating the bill.

The CHAIRMAN. Wouldn't you say that at the very least it would be subtle persuasion?

Mr. PATMAN. Well, I don't know that it is too subtle. It is rather direct.

The CHAIRMAN. I have here a communication from the General Motors Acceptance Corp. similarly addressed to all dealers. That also would be characterized in the same fashion, would it not?

Mr. PATMAN. Yes, sir.

In other words, it is a pretty good lobbying method, and by having Madison Avenue help and boost, it really means something.

The CHAIRMAN. These letters will be placed in the record.



(The letters referred to are as follows:)

GENERAL MOTORS ACCEPTANCE CORP.,  
New York, N.Y., June 2, 1961.

DEAR MR. SMITH: On January 4, 1961, Representative Emanuel Celler, Democrat, of New York, introduced House bill H.R. 71 which would prevent manufacturers of motor vehicles from financing and insuring the sales of their products. A copy of the bill and a statement by Representative Celler in introducing the bill, printed in the Congressional Record, are enclosed.

Representative Celler is chairman of the House Committee on the Judiciary and also of its Antitrust Subcommittee. The subcommittee has scheduled hearings for June 7, 8, and 9 on H.R. 71 and similar bills.

You will recall that early in 1959 nearly identical legislation, S. 838 and S. 839, was the subject of hearings by the Senate Subcommittee on Antitrust and Monopoly. In May 1960 the subcommittee voted 4 to 1 to postpone the bills indefinitely. At the time of the hearings, we sent you a copy of the General Motors statement of its position on the proposed legislation. In order to refresh your recollection, we are enclosing a summary of that statement.

The American Finance Conference, an organization of nonaffiliated sales finance companies, is the principal supporter of H.R. 71. We are informed that the American Finance Conference and its primary spokesman, Mr. Paul C. Jones, chairman of its executive committee, have circulated material to various financial institutions in an effort to gain support for H.R. 71. One of these items consisted of a letter from Mr. Jones as president of the Glenview State Bank, Glenview, Ill., to all bank presidents attaching an AFC pamphlet entitled "Still Another Tax-Favored Competitor Threatens Commercial Banks." You might be interested in our views on the pamphlet and the unfair, incorrect, and misleading statements made.

The letter and the pamphlet attempt to convince commercial banks that they face "unfair handicaps \* \* \* in maintaining their position, not only in the consumer credit business, but in the whole field of credit," because of "some of the privileges which GMAC holds in the money markets" and should therefore support H.R. 71.

Any inference that GMAC is a threat to commercial banks is, of course, absurd in the light of the fact that banking institutions in 1960 extended almost 50 percent of the automobile credit provided by all sources in the United States. Furthermore, the bank participation has increased in each of the last 5 years, while the GMAC participation in total automobile credit extended, currently about 18 percent has remained relatively unchanged for some years. These figures taken from the Federal Reserve Board statistics are undoubtedly well known to you.

As for misleading and inaccurate allegations, for example, the pamphlet states that "GMAC is not required to keep compensating balances or unused lines of credit on hand in the same ratio as other sales finance companies." The fact is that GMAC also is subject to these requirements, although there may be some variance among sales finance companies. The commercial banks may have different requirements for smaller, regional-type firms but such firms should not be used as a standard of comparison with GMAC and the other major companies.

The pamphlet also refers to the borrowings to capital leverage employed by GMAC and states that "GMAC can and does use a risk asset ratio of 20 to 1." The pamphlet is completely inaccurate in disregarding subordinated debt and preferred stock as part of the protection for the senior debt holder. The fact is that at December 31, 1960, GMAC's ratio of senior debt to capital funds (including subordinated debt) was 4.8 to 1, a conservative ratio by any standard.

The leverage approach is also used to support the pamphlet's reference to GMAC as a "tax-favored competitor." GMAC is obviously not tax favored. It pays the same taxes as any company with like income. The fact that it may operate on less capital than another company doing the same amount of business is no proof of tax favoritism.

Typical of the pamphlet in its entirety is the following paragraph.

"If enacted into law, it would help to:

- "1. Strengthen the free marketplace by restoring free competition to the U.S. auto market.
- "2. Remove GM's power to set prices for the entire auto industry.
- "3. Allow auto prices and finance charges to be set by free competition, which will give consumers the ultimate benefits.

"4. Give auto dealers the freedom to change franchises and operate as agents in a free economy.

"5. Maintain the United States in its leading position in the world auto market.

"6. Bring full, more even employment to the U.S. auto industry.

"7. Allow new auto manufacturers to enter the industry, if they wish, and allow present ones to compete more evenly—and to survive."

These conclusions do not even merit comment.

Should you decide to take a position at this time, may we suggest that you communicate with your Senators and Representatives in Congress and also with the Antitrust Subcommittee, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

Both General Motors and GMAC will file statements with the subcommittee, setting forth their position on H.R. 71 after the hearings commence. At that time we will forward you copies of those statements.

To avoid any misunderstanding as to the purpose of this letter, we ask that you refrain from communicating your views to us.

Sincerely,

W. B. ADST, *Vice President.*

GENERAL MOTORS CORP.,  
OFFICE OF THE PRESIDENT,  
Detroit, Mich., May 18, 1961.

*To General Motors Distributors and Dealers:*

May I urge you to read the enclosed reprint from the Congressional Record of a statement made last January by Representative Emanuel Celler in introducing House bill H.R. 71, also enclosed.

If enacted into law, H.R. 71 would prevent manufacturers of motor vehicles from financing and insuring the sales of their products. Representative Celler's statement discloses that the real purpose of H.R. 71 "is to divorce General Motors Acceptance Corp. from General Motors Corp. and to restore free competition to the American automobile market." I am sure you will be interested in the reasoning that leads him to conclude that divorcement is necessary.

Representative Celler is chairman of the House Committee on the Judiciary and also of its Antitrust Subcommittee. The subcommittee has scheduled hearings for June 7, 8, and 9 on H.R. 71 and similar bills. In view of the fact that dealers would be among the parties affected by this legislation, you may wish to register your opinion of it.

You will recall that early in 1959 nearly identical legislation was the subject of hearings by the Senate Subcommittee on Antitrust and Monopoly. More than a year later, in May 1960, the subcommittee voted 4 to 1 to take no further action on these bills. At the time of the hearings, we sent you a statement of our position on the proposed legislation. In order to refresh your recollection, we are enclosing a summary of that statement.

At the hearings 2 years ago, Senator Estes Kefauver, chairman of the subcommittee, referred to the fact that he had received telegrams and letters favoring or opposing the legislation. Should you decide to take a position at this time, may we suggest that you communicate with your Senators and Representative in Congress and also with the Antitrust Subcommittee, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

The corporation will file a statement with the subcommittee setting forth its position on H.R. 71 after the hearings commence. At that time we will forward you a copy.

To avoid any misunderstanding as to the purpose of this letter, I ask that you refrain from communicating your views to us.

Sincerely yours,

JULIAN F. GORDON, *President.*

**SUMMARY OF GENERAL MOTORS STATEMENT ON SENATE BILLS S. 838 AND S. 839**

**GENERAL MOTORS' POSITION**

General Motors considers the proposed legislation before the subcommittee as set forth in Senate bills S. 838 and S. 839 prejudicial not only to its interests and the interests of automobile dealers but more importantly to those of the public and the economy of the country.

These two bills represent class legislation in a most extreme form. Their enactment would discriminate against a single group of manufacturers—an unsound and dangerous precedent.

The Supreme Court has consistently recognized that a discrimination having no reasonable relation to the difference between two classes of companies is arbitrary and unconstitutional. The Federal Trade Commission, in testifying with respect to this legislation before this subcommittee, stated that it has traditionally opposed variations of the general antitrust laws to govern conduct applicable only to one segment of our economy.

#### *The rights and responsibilities of the manufacturer*

It is entirely reasonable as well as necessary for a manufacturer to be concerned with the retail financing of his products—with the terms customers receive, with the cost of financing to customers and with the treatment accorded them by the financing sources in the normal course of their relationship with such customers, as well as with all other phases of the installment credit business. There is no reason, either from the business or the legislative viewpoint, why an exception should be made in the case of automobile manufacturers to the practice of assuming a measure of responsibility for proper arrangements for installment credit on its products.

Any advantage that General Motors may derive from its ownership of GMAC is one that any company derives from a well-managed, well-run, and profitable operation that benefits its customers and its dealers by assuring them adequate financing facilities for its products at competitive rates. Such a relationship is assuredly a legitimate one, and no undue advantage accrues to GM.

#### *The importance of competition*

Additional competition in the installment credit field would be of definite benefit to customers, to dealers, and to the economy generally. Accordingly, automobile manufacturers should continue to be permitted to assume whatever measure of responsibility for the proper financing of installment credits applicable to consumer purchases of passenger cars they may wish. They should not be arbitrarily prevented from competing in this financing field. This practice is certainly not uncommon in the sale of farm equipment, appliances, furniture, and numerous other products.

The consumer and the public are best served by a competitive system in which the producing and servicing units compete for the consumer's favor. It is not the function of competition to benefit competitors. The function of competition is to benefit the consumer and hence society. This is the important consideration.

By the same token, the purpose of the antitrust laws is to protect the public by promoting competition. Yet all the arguments favoring this legislation ignore this point. No arguments have been presented showing how consumers will benefit—or even whether they will benefit. It is the conviction of General Motors that consumers will not benefit and that the public interest will not be served by the adoption of this legislation but may well be prejudiced by increased costs.

#### THE POSITION OF GMAC IN THE AUTOMOBILE INSTALLMENT CREDIT INDUSTRY

GMAC has been a leader in establishing sound installment credit policies and practices. It has had a stabilizing influence on the industry which has been apparent over the years in many areas.

It is argued that General Motors dealers must use GMAC. With respect to cars sold by GM dealers and financed on time, well over 50 percent are financed by sources other than GMAC. General Motors Acceptance Corp. offers a service that dealers may make use of if they so desire. They may or may not use it to finance their own wholesale purchase of automobiles, or they may or may not use it to discount the notes of their customers.

The retail customer may also elect to use the finance service provided by GMAC or that of someone else or none at all as he wishes. Many of them do not use GMAC. The fact is GMAC handles relatively a small percentage of the Nation's automobile installment financing. In 1958, for example, of automobile installment credit extended, banks accounted for 45 percent; sales finance companies other than GMAC, credit unions, etc., accounted for 39 percent, and GMAC accounted for only 16 percent.

Critics exaggerate GMAC's participation in the retail installment credit industry by offering incomplete charts and statistics. They refer only to the portion

of total credit extended by sales finance companies and ignore the fact that a high percentage of the automobile installment credit business has been obtained by banks and other nonsales-finance sources.

It has been stated that GMAC, due to its association with General Motors, can borrow money at considerably lower rates than its competitors. That is not so. There is practically no difference between the interest costs of GMAC and those of its principal competitors.

It has also been said that GMAC, due to its association with General Motors, can borrow money without giving its creditors as much protection as is required from its competitors. Such advantages, if any, that GMAC has in this area are attributable to its record of performance over the years.

The CHAIRMAN. Any questions?

Mr. ROGERS. Mr. Chairman?

Do I understand, Mr. Patman, that you have information that the automobile dealers probably make more out of financing than they do out of the sale of automobiles?

Mr. PATMAN. I have known of cases where that was true. They would sell their paper. It depends upon, you know, the amount involved and the circumstances. But oftentimes they can sell the paper to a finance company and make more net profit out of it than they have out of selling the automobile.

Mr. ROGERS. As head of the Small Business Committee, have you made any study of that particular matter?

Mr. PATMAN. Yes, sir, I have.

Mr. ROGERS. Would you submit the information that you received to this committee?

Mr. PATMAN. Any along that line I should be very glad to.

Mr. ROGERS. Yes, sir.

Now the other thing is this. Do I understand from your testimony that you don't think that H.R. 71 goes far enough?

Mr. PATMAN. Well, I suggested a couple of amendments for consideration of the committee.

Mr. ROGERS. And one of those is that the manufacturers, and particularly General Motors—

Mr. PATMAN. That is right.

Mr. ROGERS. Be prohibited from financing directly the sale of their own products.

Mr. PATMAN. That is right, because it gives them a captive market.

Mr. ROGERS. Would you extend that across the board to all manufacturers?

Mr. PATMAN. Personally, I am impressed that it should be extended, but I would have to look into the cases separately.

Right now let's confine it to the financing of automobiles, and certainly I think that should be stopped.

Mr. ROGERS. Thank you, sir.

Mr. McCULLOCH. Mr. Chairman, I should like to inquire whether or not this subcommittee has invited General Motors, Ford, Chrysler, American Motors, Studebaker-Packard agencies, both large and small, to testify before the committee?

Mr. MALETZ. Mr. Chairman, the subcommittee has invited the president of each automobile manufacturing company to testify. It has not invited the dealers to testify.

Mr. McCULLOCH. Mr. Chairman, in view of the fact that there has been read into the record two or more letters which leave the impression that agents were coerced into opposing this bill and probably

would be fearful of attending this hearing, in order to make the record accurate, both the large and small agents of these several automobile companies, in my opinion, should be invited to testify before this committee.

The CHAIRMAN. Ford Company's representatives said they will present two dealers to give their views, and as the testimony unfolds if it is necessary to call other dealers we shall be glad to do so.

Any other questions?

Mr. McCULLOCH. I am very happy to have Mr. Patman, the chairman of the Select Committee on Small Business testify this morning. He is chairman of the committee upon which I serve with a great deal of pleasure.

Mr. PATMAN. And the ranking member upon whom I depend greatly.

Mr. McCULLOCH. And, of course, it is well known that our colleague, Mr. Patman, is the senior member of the House Committee on Banking and Currency. As such, he has great interest in banking legislation and the activities of banks.

I wonder, Mr. Patman, if you have available the total amount of automobile financing that is done by commercial banks?

Mr. PATMAN. I don't know that we have it right now, but we can get it rather quickly.

Mr. McCULLOCH. Would you know whether or not that amount of financing has been on a steady increase for a number of years?

Mr. PATMAN. You mean bankers financing automobiles?

Mr. McCULLOCH. That is right.

Mr. PATMAN. My off-hand observation would lead me to believe that it has been on the increase, but the bankers, commercial bankers, were very slow to catch on. For 20 years they paid no attention to automobile financing, didn't want it, and all at once they said, "Why that belongs to us. All these other fellows ought to get out of the field." That is the reason I can't understand now why they are not here. Here is a proposal that is in the public interest, would help the local institutions, keep their profits at home, put the reserves in their local bank to help everybody and they are not here supporting it.

Mr. McCULLOCH. The Chairman has just advised me that we will have testimony today which will furnish in detail and accurately the answer to that.

Mr. PATMAN. Good, I would love to see it myself. We have had it in the past, and we could bring it up to date very quickly if you need it.

Mr. MEADER. Mr. Chairman, I was interested in your last sentence, Mr. Patman, and I quote: "I don't want any of them to enjoy this monopolistic manufacturing financing sacred cow privilege".

Mr. PATMAN. That is right.

Mr. MEADER. I wonder if that, in your opinion, should be applied generally to industries where companies combine producing and the financing of their sale of products.

Mr. PATMAN. There are so many different products.

I would like to pass on each one separately.

But in this case I can definitely make that statement.

Mr. MEADER. You didn't intend by that statement, then, to say that a manufacturing company which had a financing subsidiary to facilitate the sale of its product was wrong per se?

Mr. PATMAN. Not per se, no; but in this case it is. That is my feeling about it. We know they are monopolistic in this case.

Mr. MEADER. Well, as I understand it—

Mr. PATMAN. And we know the customers are captives.

I mean we know that they have a captive market.

Mr. MEADER. As I understand it, American Motors does have a financing subsidiary, but not for automobiles but for its appliances. You find nothing wrong with that?

Mr. PATMAN. I would rather confine my statement to what is in this bill for the present.

Mr. MEADER. The reason for the question is that one of the objections to the bill which has been raised is that this is class legislation confined to a single industry, and if this is an antitrust principle which is wrong in this industry the question is, shouldn't it be more generally applicable?

Mr. PATMAN. Well, you have got this one before you, and obviously correction is needed. I would love for you to pass this bill, and then get on the others, if they are needed.

Mr. MEADER. Let me ask you this. There are apparently employee credit unions in the automobile financing business.

Mr. PATMAN. Yes.

Mr. MEADER. To some extent. It hasn't appeared in our record yet.

Mr. PATMAN. They are in it in a big way.

Mr. MEADER. Would you say that an automobile employee's credit union should be forced to get out of the automobile financing business?

Mr. PATMAN. Well, that is a separate proposition. You see credit unions have a peculiar—not peculiar, I will say a different kind of entity. A credit union is run by its members. It is strictly a democratic organization in that the local members have complete control over it, and it doesn't lend itself to affiliation with monopoly or anti-monopoly or anything else.

Mr. MEADER. So you wouldn't object to, say the Ford employees credit union, if there is one, engaging in the financing of automobiles of its members.

Mr. PATMAN. Why I would encourage it because they save a lot of interest. You know they have a true rate of one-half of 1 percent, and many of the finance companies have a discount rate of 6 percent which is 12 percent, and there is a different way of handling it.

The CHAIRMAN. Mr. Patman, a credit union is not engaged in the manufacture of a car, is it?

Mr. PATMAN. No.

The CHAIRMAN. The bill is aimed at a manufacturer of cars which is also in the financing business.

Mr. PATMAN. It is a different sort of entity.

Mr. MEADER. Let me obtain your interpretation of section 2 of H.R. 71, Mr. Patman, and I will read it:

It shall be unlawful for any corporation, its subsidiaries, officers or employees engaged in the manufacture and sale in interstate and foreign commerce of motor vehicles or any person or corporation which acts for or is under the control of such corporation to own or maintain any facilities for financing the sale at wholesale or retail of motor vehicles manufactured by such corporation or to own or maintain any facilities for issuing insurance policies of any kind in connection with the sale or purchase of motor vehicles manufactured by such corporation.

Wouldn't that clearly prohibit the Ford employees credit union from financing automobiles made by the Ford Motor Co. for its members?

Mr. PATMAN. I don't think so.

Mr. MEADER. Certainly employees of a motor vehicle corporation—

Mr. PATMAN. If it is held that way, it should be corrected. Our committee happens to have jurisdiction over credit unions and we'd fix that up pretty soon.

The CHAIRMAN. I would say, Mr. Patman, if by any stretch of the imagination, that that result would be envisaged, the committee would change the language so as to exclude credit unions that might be composed of employees of a manufacturing company.

Mr. PATMAN. Too farfetched.

The CHAIRMAN. Any other questions?

Mr. McCULLOCH. Yes. I would like to ask one final question.

Mr. Patman, do you believe that within the framework of existing law and well-accepted general principles that the final decision should be made upon the basis of how the consumer can be furnished the best terms for buying on credit?

Mr. PATMAN. You couldn't answer that just exactly "Yes" or "No."

Of course my answer would be "Yes," if I had to answer it categorically.

But there are some ifs, and, and buts in that.

Suppose that an outside concern could come into a community and temporarily offer better terms. I would be still against the outsiders because I know their habits and policies.

I know what they have done in the past. As soon as they get charge of the market, they go up again, and in that way it would be forcing the little man out in that community. The fellow who is making a living there, and whose net profits remain at home, and whose profits remain in the reserves of the banks, and upon which money is issued 10 to 1 and more to help the local community is the one that should benefit. Income flies overnight to some distant city when outside firms are involved, and has a devastating effect upon the community. That should be considered along with interest rates.

Mr. McCULLOCH. That is right.

If the evidence should finally show that well over 65 percent of all automobile credit financing is done by State and National banks and independent sales finance companies, would you be of the opinion that this resulted from or caused substantial competition for that paper?

Mr. PATMAN. Yes, that causes some competition, but if you don't stop these people they have a great advantage. They have a captive market.

I repeat, they have a captive market, and local people are not in a position to compete with them effectively.

Mr. McCULLOCH. If the share of the market held by GMAC has not been increasing since the consent decree of 1952, would you see any particular danger in the activities of GMAC; particularly if other credit agencies were financing 65 or 75 percent of all the credit business in the automobile field?

Mr. PATMAN. I still see a great danger in this, Judge.

Mr. McCULLOCH. Even though there has been no increase—

Mr. PATMAN. That is right, even though that is true, because this gives them such a wonderful opportunity to have a monopolistic business, to have the advantage of the others. And you don't believe—I know you, I know you don't believe—in these unfair advantages. This gives them what I would consider an unfair monopolistic advantage in a captive market.

Mr. McCULLOCH. But your final conclusion might be based upon evidence that goes into the record concerning the costs of credit, the amount of credit that is furnished by all other lending agencies other than the automobile finance companies.

Mr. PATMAN. Well, that would be persuasive, but I lean toward the local man. I am not advocating or proposing that they charge higher rates, and they should be stopped, if they charge extortionate rates. We have State laws to handle that, and they will handle it, I am sure.

I think it helps the community so much more to have business operated locally and have the profits remain at home. That is very important.

We are losing our community life and spirit in America, Judge. We are becoming a nation of clerks and hired hands. No decisions of great importance are made locally. Decisions are made in distant cities.

That is bad for America, and every time we see something moving in that direction to make it worse, we ought to stop it. And I think this makes it worse.

The CHAIRMAN. In answer to the question of the gentleman from Ohio, it is well to take into consideration the statements made here yesterday.

Judge Loevinger, head of the Antitrust Division, speaking for the Department of Justice, and Rand Dixon, Chairman of the Federal Trade Commission, speaking personally, indicated that the General Motors Acceptance Corp. and General Motors have a competitive advantage over all other competitors, and in that sense there was a throttling of competition.

Now, is not the real answer that the public is best served where there is competition?

Mr. PATMAN. Yes, sir; that is right.

The CHAIRMAN. Judge Loevinger and Rand Dixon said, also, that there would be more competition in these fields if there were a severance of General Motors Acceptance Corp. from General Motors. Is that not the answer?

Mr. PATMAN. Yes, sir.

You know, I see in this something that is fundamental, and it affects us right here in Congress today. I have never voted, for instance, for Federal aid to education. I am inclined to vote for it now.

Why?

Because the moneymaking opportunities have been taken away from local people. They are no longer able to support their educational institutions like they used to.

Their profits are flown out every night away from the local bank, and local people do not have business opportunities. I feel that it works to a great advantage. Take, for instance, a school district. It has tangible profits upon which taxes are levied for the payment of



bonds that are used to build school buildings and also for the payment of teachers.

Now, who pays the taxes in that school district? The people who have that tangible property, the homes, the businesses and the farms and the plantations. These people, a lot of them veterans in particular, still owe over 90 percent of the amount of their home purchase.

And so when they pay taxes, they pay taxes upon what they owe more than what they own.

And that is the hardest tax on earth.

Now, the local taxes on school districts have become prohibitive in many areas of our country. Our experts are telling us that we have got to double the amount of money in the next 10 years that we will need to properly educate the boys and girls. If that is correct—if you double the rates in these school districts—the States will own the land.

People will not own it; they will not pay the taxes on it. They cannot. It is prohibitive, and nobody will buy it because the taxes would have to be paid.

This is in the direction of socialism.

Now, then, if we restore resources to the local communities instead of taking business opportunities away from them, then they will have money to take care of their educational needs. The same thing goes for other things. And I think that is a big factor in community life.

Mr. McCULLOCH. Mr. Chairman, I would like to say this with respect to the very helpful statement of Judge Loevinger yesterday. It was helpful. I think it was a very well prepared statement.

I was particularly struck, however, by the paragraph in Judge Loevinger's statement that listed the total by percentages, of the credit furnished by the independent sales finance companies and GMAC. The credit furnished by the banks was left out or omitted from the statement. I see from a separate statement that is before me this morning that State and National banks, as of the end of 1959, were providing between 45 and 50 percent of all the credit extended for the purchase of automobiles in America.

Therefore, Mr. Chairman, when we attempt to arrive at conclusions, we should, if we want to arrive at a logical conclusion, have all the facts in the record. I hope that the fact about the amount of credit extended by the banks will go into the record.

I come from a town of 20,000 in Ohio. There is competition for automobile paper in my town. I think it is typical of every town in Ohio.

I will not attempt to speak for other places. We have two national banks which compete for that paper. GMAC, I presume, competes for it.

And we have at least three, possibly four or five independent sale finance companies that compete for that business.

Mr. MEADER. Do you have any credit unions?

Mr. McCULLOCH. Yes; we have several credit unions, and they, of course, finance from time to time the purchases of the employees within their respective companies.

Therefore, I would like to know the particular places in America where there is not real, present competition for this business.

Mr. PATMAN. May I comment on your statement, Judge?

Now, you state that the banks have 45 percent of this paper. Of course, they are the people who are independent. They are not sub-

ject to this influence of the big manufacturers. They can make their own arrangements with their local banks. Some of this paper possibly comes through these large finance companies, I don't know.

I don't know whether that 45 percent is the independent customers or not, but I will assume that it is.

But now, what about the lower income groups? They are the ones this will affect most, and they will be the hardest hit by it, because they will have to patronize these dealers who were brought into being by the automobile manufacturer.

There is where the captive market comes in. You see, they have to deal with them.

Now, the person who has a little money and credit, he can go to the bank. He can make his own deal and get a better deal, a much better deal.

That is the reason they go to the banks and the credit unions in particular, because they make a better deal. But it is those who cannot do this who are the captives.

Mr. McCULLOCH. Yes. Well, Mr. Chairman, I am sure that my good friend, Mr. Patman, knows that State and National banks are extending credit on chattel mortgages to people in every segment of our society, and I am sure he knows from the statistics that weekly come over his desk, both in the Small Business Committee and as Chairman of the Joint Committee on—what is it?

Mr. PATMAN. The Joint Economic Committee.

Mr. McCULLOCH. The Joint Economic Committee—knows that banks compete for the business of the worker. And one of the tests back in Ohio, again, is, is he employed and is his credit reasonably good. That is the same criteria that is applied in most if not all instances, and if it is not, it should be, by the independent sales finance companies.

Mr. PATMAN. I want to warn you against being too optimistic about what the banks are doing in this field, particularly in the field of chattel mortgages and helping out on individual loans. I do not see it just exactly that way. I see them drawing in their horns, so to speak, and turning more toward long-term securities including tax-exempt bonds.

I do not object to banks holding a fair amount of Government securities as a secondary reserve, but to go into the business of being a Government bond broker is another matter. They are using money that is created upon their books that doesn't cost them a penny. It is manufactured money to buy long-term bonds and particularly tax-exempt bonds. When they get the income from this poor fellow who has to pay taxes on what he owes, and they themselves do not have to pay taxes on some of their income, it is going a little bit too far. And they are doing that more than they are getting into this small-sized borrowing paper that you are talking about, Judge.

Mr. McCULLOCH. Mr. Chairman, that has not been my personal experience. As a matter of fact, Government securities are not tax exempt.

Mr. PATMAN. No. I am talking about the municipals as they call them.

Mr. McCULLOCH. Yes; and I am going to get to that, because there is information on that, too. I am not sure that the record shows that

the banks, big or little, are increasing their portfolio in municipal investments at this time or for the last 6 months.

Mr. PATMAN. Get the Federal Reserve reports and you will find that they hold \$17 billion in tax-exempt securities. That is about a third or a fourth of all tax-exempt securities.

Mr. McCULLOCH. And they properly hold tax-exempt securities.

Mr. PATMAN. And they have increased substantially the last 6 months.

Mr. McCULLOCH. And further, and I shall not pursue it after this statement, I think that my good friend will find that there is a very decided and constant increase in the amount of money State and National banks are putting into the financing of automobile purchases—

Mr. PATMAN. That is all for the good.

Mr. McCULLOCH. Both new and old. Yes; we agree then.

Mr. PATMAN. Especially if it is an independently owned unit bank, not a branch or holding company bank.

Mr. MEADER. Mr. Patman, because of your long service on the Banking and Currency Committee of the House, your familiarity with banking legislation, I would like to ask you about a point that has been raised in a statement which will be presented later this morning, only because I want to take advantage of your presence.

It is suggested that in the Bank Holding Company Act of 1956 there was a specific exemption of financing affiliates, and the policy of that legislation is to permit formation of subsidiary corporations for conducting and implementing the natural and legitimate financial activities related to a corporation's business.

Now, have I correctly under the policies—

The CHAIRMAN. You did not read the whole statement, Mr. Meader. You are speaking of the statement of Mr. Donner, are you not?

Mr. MEADER. That is right.

The CHAIRMAN. On a certain page—

Mr. MEADER. I will read the whole statement.

The CHAIRMAN. Mr. Donner refers also to the Celler-Kefauver Act in that regard. I think perhaps you ought to get the whole matter in context.

Mr. MEADER. I will just read page 26 of Mr. Donner's statement and ask for your comments on that. If it is inaccurate, because of your familiarity with banking legislation, I would like to have your statement.

Mr. PATMAN. Is that the Holding Company Act of 1956?

The CHAIRMAN. He refers to other acts, too.

Mr. MEADER (reading) :

With respect to legislative precedent, it has been the consistent position of Congress to permit companies to form subsidiary concerns as a means of conducting normal business affairs and appropriate related activities. In enacting section 7 of the Clayton Antitrust Act in 1914, Congress specifically provided:

"Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

Significantly, when Congress amended section 7 of the Clayton Act by the Antimerger Act of December 20, 1950—

**The CHAIRMAN.** Call it the Celler-Kefauver Act.

**Mr. MEADER.** This paragraph is left intact:

Of equal significance is the fact that in 1956 the 84th Congress, in enacting the Bank Holding Company Act, specifically recognized the reasonableness, if not the necessity, of permitting industrial concerns to own or control banks operated as aids to the main business of the companies.

Thus, in the broad declaration of the policies stated in 1914, and reaffirmed in 1950 and in the specific exemption of financing affiliates in the Bank Holding Company Act of 1956, Congress has consistently maintained that the formation of subsidiary corporations for conducting and implementing natural and legitimate financial activities relating to a corporation's business is appropriate and desirable.

**The CHAIRMAN.** Before you answer that, Mr. Patman, since the Celler-Kefauver Act was mentioned, I want to make a comment. I happen to know something about the formulation of the Celler-Kefauver Act which was mentioned by Mr. Donner in his statement on page 26, and significantly these words were included—

when the effect of such formation is not to substantially lessen competition.

That term was also contained in the old act, section 7. It is significant that we maintained those phrases. Now, the history of General Motors Acceptance Corp. as a subsidiary of General Motors clearly indicates that there has been substantial lessening of competition. It is indicated by the fact that they were indicted and convicted for violation of the antitrust laws and for substantially lessening of competition. And there have been other cases in the Federal Trade Commission and in the Department of Justice. Proceedings are now pending in other cases involving the General Motors Corp. where there were charges of substantially lessening competition.

Now, certainly, there was no intention by the authors of the Celler-Kefauver Act to grant corporate immunity by allowing a parent company to violate the antitrust laws through its subsidiary. Yet this is exactly what is being done now. General Motors and the General Motors Acceptance Corp. are, in my humble opinion, violating the antitrust laws, notwithstanding that there was never any intention to give them immunity from the antitrust laws or the Celler-Kefauver Act when we amended section 7 of the Clayton Act.

I can say that because while I may not be deemed an expert, at least I was the author of the bill and prepared the majority report. I know exactly what the intention of the committee was when it presented the bill to Congress.

Now you can answer if you wish.

**Mr. PATMAN.** It answers itself. Now, what was read there doesn't mean very much insofar as consideration of the present problem is concerned when you add the phrase, "when the effect of such formation is not to substantially lessen competition." You see, that is safeguarding the public interest.

**Mr. MEADER.** You are reading from the original Clayton Act of 1914, which was left untouched by the Celler-Kefauver Act.

**Mr. PATMAN.** Well, I know, but the fact that the Congress does not touch it does not mean that they are affirmatively approving it. It just means that they did not pass on it at the time. Now, if the Congress took this up and was passing on whether or not it should be repealed, and they failed to repeal it, why, of course, the gentlemen would have something to indicate that Congress was in favor of it.

But when it has never been presented as an issue, I do not think you can say the Congress affirmatively approved it when Congress did not pass on it at all except in 1914 when we were living in an entirely different world to what we are living in today.

Mr. MEADER. I respectfully suggest to my colleague that you are talking about the Clayton Act and the Celler-Kefauver Act and not talking about the Bank Holding Act—

Mr. PATMAN. Well, I am not in favor of this anyway because it permits branch banks and branch organizations and destruction of local communities. I have spent my entire life fighting that, you know.

Mr. MEADER. You mean you oppose that provision in the Bank Holding Act of 1956?

Mr. PATMAN. I do not even know that it came up. Congress had so many snakes dug up to kill in that bill that I do not think this was even mentioned. I doubt that it was.

The CHAIRMAN. Allow a clarification by these questions that counsel wants to put.

Mr. MALETZ. Mr. Chairman?

Mr. Patman, is it not a fact that one of the major purposes of the Bank Holding Company Act was to require the divorcement—

Mr. PATMAN. That is right.

Mr. MALETZ. By bank holding companies, of businesses extraneous to banking within 2 years after its enactment?

Mr. PATMAN. That is right. Transamerica was an outstanding example.

Mr. MALETZ. And is it not correct that the principle effect in this area of the Bank Holding Company Act was to divorce the Occidental Life Insurance Co. from ownership by the Transamerica Corp.?

Mr. PATMAN. Yes, sir.

Mr. MALETZ. Now, in that context, is not the Bank Holding Company Act a precedent for this very bill?

Mr. PATMAN. I would consider it so. If you want to consider what the Banking and Currency Committee did in the Congress on that, I think it is in the direction you are going now.

The CHAIRMAN. Thank you very much, Mr. Patman.

Mr. PATMAN. Thank you, gentlemen.

The CHAIRMAN. We are always grateful to you for your appearances before us.

Mr. PATMAN. Thank you, Mr. Chairman.

(Mr. Patman's prepared statement follows:)

STATEMENT OF REPRESENTATIVE WRIGHT PATMAN, DEMOCRAT, OF TEXAS, BEFORE THE HOUSE JUDICIARY ANTITRUST SUBCOMMITTEE ON H.R. 71

Mr. Chairman, I think this is a good bill because it will restrain monopolistic practices and permit continued survival of locally owned business institutions in our Nation's communities.

One of the country's biggest problems is the weakening and even the destruction of the economies of our local communities. This practice of permitting automobile manufacturers to own and control the financing of the product they manufacture is further evidence of the fact that the Main Streets in the communities of our Nation are being run by Wall Street. It is further destruction of free competition in private enterprise and must be halted if the smaller communities of our country are to have vigorous and prosperous economies to support the daily needs of community life. A continuation of the present practice will probably result only in a great clamor and demand from our cities for further Federal aid.

**BANKERS SILENT**

We have been depending upon our commercial banking institutions to supply the financial lifeblood needed by our communities. We have looked to them as the source of funds to supply our business and personal needs.

Now it is time to see whether they have acted with vision for the future and in the public interest of the communities they are intended to serve or whether their actions are based on short-sightedness and the lust and greed of the moment. I am afraid the testimony heavily favors the latter.

I understand that the committee has had some correspondence from individual banks, and that most of them favor passage of H.R. 71 while a few are opposed, but that none of them thus far has offered to testify.

But I am stunned to learn that not one word has been heard from either the American Bankers Association or the Independent Bankers Association. I am amazed that these big associations that represent the banking institutions of our entire Nation are not here in wholesale numbers clamoring for passage of this legislation. If the top-ranking officers of these powerful and influential associations cannot foresee the crippling effects of monopolistic combinations on the health of the economy, they should be here in numbers demanding approval of this bill for the selfish protection of their own institutions. Banks are organized and operated to make profits, of course, but they also are chartered and permitted to exist to serve the public in their local communities. I am concerned that too many banks no longer fully perform this public service but invest their resources in Government obligations and other securities far from their local areas.

The bleeding of funds from local banks and from local finance companies also bleeds the communities of the revenues they need to grow and prosper. It is one of the factors that is drying up normal community life.

It is not just an invitation for further aid to local areas, it is a case of forcing the Federal Government with a vengeance to take all local opportunity away from communities and supply further assistance in such services as old-age pensions, depressed area assistance, aid to education, and whatever else local governments no longer have the financial sustenance to provide themselves. Our economy tends to veer more in that direction continuously. I hope the Congress will act to stem this trend and help local communities retain their profitable businesses so they can take care of, if possible, their local obligations to education, etc.

Finally, Mr. Chairman, I want to make it clear that I am not addressing my remarks toward any single automobile manufacturing company. I don't want any of them to enjoy this monopolistic manufacturing-financing "sacred cow" privilege.

The CHAIRMAN. There is a brief statement to be read by the representative of Senator Estes Kefauver.

Mr. Fensterwald, will you come forward?

Mr. Fensterwald is the staff director of the Senate Antitrust Subcommittee.

**STATEMENT OF HON. ESTES KEFAUVER, A U.S. SENATOR FROM THE STATE OF TENNESSEE, PRESENTED BY BERNARD FENSTERWALD, JR., STAFF DIRECTOR, SENATE ANTITRUST AND MONOPOLY SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY**

Mr. FENSTERWALD. Thank you, Mr. Chairman.

Senator Kefauver wanted to apologize for not being here this morning. Would you like me to read this or just put it into the record?

The CHAIRMAN. You might submit it for the record.

Mr. FENSTERWALD. All right, thank you.

(The statement referred to is as follows:)

**STATEMENT BY SENATOR ESTES KEFAUVER**

I am very happy to have the opportunity today to comment on legislation to prevent automobile manufacturers from financing and insuring the sale of their

products. I have introduced a companion bill in the Senate (S. 1982) to the same purpose.

I am familiar with the situation in this field because the subcommittee of which I am chairman has held hearings in the past three Congresses which have revealed the great need for this type of legislation. I do not believe I need, therefore, repeat in any great detail the reasons why automobile manufacturers should be divested of their financing and insuring outlets. The arguments remain the same and indeed are reinforced with the passage of time.

More than two decades ago the antitrust approach was applied to the solution of the problem of control of automobile financing. In May 1938, General Motors, Ford, and Chrysler were indicted under the Sherman Act for alleged coercion of their dealers to finance car sales through manufacturer-owned finance firms. Civil cases also were filed seeking divestiture of the finance businesses from each company. Chrysler and Ford consented to divestiture of their finance firms and the criminal cases against them were dismissed.

General Motors went to trial in the criminal case in 1939 and was convicted and fined. Its civil case was finally settled by consent decree in 1952. However, the decree permitted General Motors and General Motors Acceptance Corp. to remain affiliated. Consequently, instead of freeing the industry from monopolistic control, the largest company was left with a stronger power than it had previously enjoyed. Ford went to court to ask for relief, and a court decision provided Ford and Chrysler the opportunity to enter the financing field again.

Ford has been operating its own financing firm since 1959. If Chrysler follows, and if Ford and Chrysler are as successful as General Motors in their financing activities, we may well be back where we started in 1938, in spite of many years of litigation under existing antitrust laws. This would also put the remaining two auto manufacturers—American Motors and Studebaker-Packard—under a severe handicap. Manufacturers who have their own financing subsidiaries have an unfair competitive advantage over those who do not.

With two of the Big Three automakers financing their own car sales, independent financing companies—as well as banks involved in auto financing—would be excluded from all but a small share of the new car financing field. As concentration increases in the financing field, many of these independent financing firms will be forced out of business and others will be badly hurt.

Since the 1938 indictments did not permit the Government to obtain effective relief, I believe that specific legislation is now the best solution for this problem. The members of my subcommittee will be watching the progress of H.R. 71 with great interest. When this bill is approved by the House, as I hope and expect, I can assure you that the Antitrust and Monopoly Subcommittee will take it up for prompt consideration.

The CHAIRMAN. Thank you very much.

Thank the Senator for us.

Mr. FENSTERWALD. I will do that.

The CHAIRMAN. Our next witness is Mr. Charles G. Stradella, chairman of the board of the General Motors Acceptance Corp.

Mr. Stradella, will you identify the gentleman on your right?

Mr. STRADELLA. Mr. A. F. Power, the general counsel for GMAC and MIC.

# **STATEMENT OF CHARLES G. STRADELLA, CHAIRMAN OF THE BOARD, GENERAL MOTORS ACCEPTANCE CORP., ACCOMPANIED BY A. F. POWER, GENERAL COUNSEL, GMAC AND MIC**

Mr. Chairman and gentlemen, my name is Charles G. Stradella. I am chairman of the board and chief executive officer of General Motors Acceptance Corp., a wholly owned subsidiary of General Motors Corp., organized in 1919 under the banking laws of the State of New York.

Motors Insurance Corp. is a wholly owned subsidiary of General Motors Acceptance Corp. This subsidiary was organized in 1939

under the insurance laws of the State of New York and over a period of time took over the physical damage insurance business of a former General Motors Corp. subsidiary—General Exchange Insurance Corp., organized in 1925. The latter was merged with Motors Insurance Corp. in 1960 with Motors Insurance Corp. becoming the surviving company.

With me is Mr. A. F. Power, general counsel of GMAC and MIC. The CHAIRMAN. What is MIC?

Mr. STRADELLA. Motors Insurance Corp., a wholly owned subsidiary of GMAC.

#### SECTION I. PURPOSE OF STATEMENT

The purpose of this statement is to describe accurately for the committee the business activities of GMAC and MIC; the relationships of GMAC, its subsidiary MIC, and General Motors Corp.; what the relationships encompass and what they do not; and to clear up a number of incorrect and misleading statements concerning these activities and relationships.

These statements have been made in connection with the bill under consideration, H.R. 71, and with similar bills such as S. 838 and S. 839 introduced in the previous Congress. They have appeared in material published by supporters of this and similar bills as well as in testimony before the Senate Subcommittee on Antitrust and Monopoly in 1959 at the time of its hearings on S. 838 and S. 839.

It would appear that inaccurate information has also been furnished to some members of your committee. The major source of such material would seem to be the American Finance Conference and its spokesmen.

In order to set the factual situation in accurate perspective, we are submitting the following statement.

#### SECTION II. THE BUSINESS OF GMAC AND MIC

This section describes the business of GMAC and MIC and the participation of GMAC in the automobile finance business. The latter has been the subject of considerable misinterpretation.

GMAC facilitates the movement of General Motors products to General Motors dealers and their customers by offering (1) to finance the distribution of new products to such General Motors dealers for resale (wholesale financing) and (2) to finance General Motors dealers' installment sales of new and used products to retail customers (retail financing).

GMAC conducts its operations through more than 10,000 employees operating 320 branches, of which 276 are in the United States and 44 are in 10 other countries. Its facilities in the United States are nationwide.

It competes with commercial banks, sales finance companies, credit unions and any others engaged in similar activities.

As a direct adjunct of its financing service, GMAC makes available group creditor life insurance and group creditor disability insurance, both of which GMAC is willing to finance. These two kinds of insurance are provided by the Prudential Insurance Co. and are offered by GMAC at the same premium costs paid by GMAC to Prudential.



These coverages are optional and not a requirement of the GMAC time sales contract.

Mr. MALETZ. Mr. Stradella, at any time has GMAC had any arrangement with Prudential Insurance Co. to obtain a refund from Prudential?

Mr. STRADELLA. There is an understanding whereby if the experience is better than anticipated, there is a refund, yes.

Mr. MALETZ. When was that arrangement entered into?

Mr. STRADELLA. I think it was in the original, when the original contract was entered into.

Mr. MALETZ. When was that, sir?

Mr. STRADELLA. I can't recall.

Mr. MALETZ. About how many years ago?

Mr. STRADELLA. Oh, I would say it was a good 15 years ago.

Mr. MALETZ. And that arrangement is still in effect?

Mr. STRADELLA. That arrangement is still in effect, yes.

Mr. MALETZ. And approximately how much does GMAC receive from Prudential each year by way of refund or rebate?

Mr. STRADELLA. It varies. For example, the loss experience this last year was approximately 93 percent of the premiums at that time.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question at this point.

Is this arrangement available to other automobile financing companies and to commercial banks?

Mr. STRADELLA. From the Prudential, you mean?

Mr. MALETZ. Yes.

Mr. STRADELLA. I don't know.

Mr. MALETZ. This arrangement is a private arrangement between Prudential and GMAC?

Mr. STRADELLA. Yes.

I should think anyone else could get it.

The CHAIRMAN. Let us find out about this.

Mr. McCULLOCH. Yes; I think that is important. I would like to get that for the record.

Mr. STRADELLA. I think we can find that out from the Prudential. I would be surprised if it were not available to others.

Mr. MALETZ. May I ask, Mr. Stradella, approximately how much by way of rebate did GMAC obtain from Prudential last year?

Mr. STRADELLA. Last year was \$974,000.

Mr. MALETZ. Could you supply for the record the amount of rebate obtained by GMAC from Prudential for each year since the arrangement was entered into?

Mr. STRADELLA. Yes.

Mr. MALETZ. Was this a written arrangement?

Mr. STRADELLA. Not having anything to do with it directly, I don't know, but there is a contract.

Mr. MALETZ. Yes, sir.

Mr. STRADELLA. Now, whether the contract includes this experience refund in itself or whether it is a separate document, I do not know.

We can give you that.

(The information referred to appears at pp. 569-580.)

Mr. MALETZ. Would you recall, Mr. Stradella, off-hand, how much GMAC obtained from Prudential by the way of rebate in the year before last?

Mr. STRADELLA. I think we have it.

Mr. MALETZ. Or possibly that gentleman could read the figures into the record for each year since the arrangement was entered into?

Mr. STRADELLA. If he has got them, I will read them.

Yes, I will give you them.

For what years would you like?

This also goes back and indicates the answer to one previous question. It started in 1942. Now would you like them from 1942?

Mr. MALETZ. Yes, if you would.

Mr. STRADELLA. 1942 the dividends were \$1,581.

The CHAIRMAN. What was that amount?

Mr. STRADELLA. \$1,581.

Mr. ROGERS. Dividends or refunds?

Mr. STRADELLA. We refer to it as dividends.

It is an experience refund, that really is what it is. It is an experience refund.

In 1943, \$4,030; 1944, nothing; in 1945, \$260; 1946, \$4,823.

I should point out that the volume of premiums in those years was very low: 1947, \$12,000; 1948, \$30,000; 1949, \$119,000.

The CHAIRMAN. How much?

Mr. STRADELLA. \$119,000. In 1950, \$953,000; 1951, \$1,389,000; 1952, \$1,445,000; 1953, \$2,222,000; 1954, \$2,989,000; 1955, \$3,535,000; 1956, \$2,788,000; 1957, \$2,795,000; 1958, \$1,261,000; 1959, \$936,000.

And for 1960, the figure which I have just given you, \$974,000, includes an interest payment which has nothing to do with the experience refund.

The actual experience refund for 1960 is \$659,000.

There is an interest adjustment which we receive because we pay premiums in advance, and we get an interest credit on the prepayment of premiums that has nothing to do with it.

(On June 26, 1961, General Motors supplemented the record as follows:)

On page 381 of the transcript Mr. Stradella quoted the annual insurance dividends received by GMAC from the Prudential Life Insurance Co. during the years 1947 to 1960, inclusive. Some of the figures were transcribed in round numbers and some of them were transcribed correct to the nearest dollar. In order for the figures to be consistent with each other it is necessary that all of the quoted dividends be rounded to the nearest thousands of dollars as indicated by the pencil corrections on page 381. More importantly, however, Mr. Stradella was quoting from a listing of dividend payments handed to him at his request during the hearing, and while it is true the dividends by years for the entire 19-year period 1942 to 1960, total \$21,144,000, all of such amount did not accrue to the benefit of GMAC. Premiums earned by Prudential on the GMAC policy since its inception amounted to \$137,103,000; however, charges collected by GMAC from customers for insurance coverage through 1960 totaled only \$129,921,000, a difference of \$7,182,000, due principally to the fact that for an extended period GMAC's charge to the customer was approximately 10 percent lower than Prudential's premium charge to GMAC. This difference of \$7,182,000 must be deducted from the gross dividends of \$21,144,000, leaving a net amount of \$13,962,000.

The CHAIRMAN. What is that total that you just gave us?

Mr. STRADELLA. The total over what period of time?

From 1942? \$21,144,000.

The CHAIRMAN. Total from 1942 to 1960, inclusive, is \$21,144,000?

Mr. STRADELLA. Yes.

(Subsequently, by letter dated June 26, 1961, General Motors supplemented the record as follows:)

In the interest of accuracy the record should be clarified on this point on page 382 of the transcript to indicate that the amount of \$13,962,000 accrued to the benefit of GMAC instead of \$21,144,000, exclusive of expenses in administering the program.

The CHAIRMAN. The General Motors Acceptance Corp. got that from the Prudential Life Insurance Co. in the form of rebates?

Mr. STRADELLA. That is right, on a premium volume of \$137 million.

The CHAIRMAN. Out of a premium of \$137 million?

Mr. STRADELLA. That is right.

Mr. McCULLOCH. Mr. Chairman, would that premium volume be broken down by year?

Mr. STRADELLA. Yes, it would, and, of course, as the experience refund became larger the volume, of course, was much larger. It currently is running at the rate of about \$18 million a year.

The CHAIRMAN. This money, this \$21,144,000 becomes profit to the General Motors Acceptance Corp.?

Mr. STRADELLA. Before we allocate any expenses. We do a great deal of work in connection with this group life insurance. We handle it all, all the paperwork, make the settlements and so forth.

The CHAIRMAN. But the money goes into the general treasury?

Mr. STRADELLA. It goes into our general treasury, that is right.

The CHAIRMAN. Like any other funds that come in?

Mr. STRADELLA. That is correct, gross, but we have expense in connection with it which is not charged against the \$21 million.

Mr. ROGERS. Mr. Chairman, may I ask the witness a question?

Do I understand that this refund is a result of business that was channeled to Prudential under this contract that you have with it?

Mr. STRADELLA. Correct.

Mr. ROGERS. And it was paid by those who borrowed from GMAC—they paid the premium?

Mr. STRADELLA. They paid the premium.

Mr. ROGERS. They paid it direct to you and you in turn transmitted it to Prudential and then when Prudential didn't have the loss they rebated a certain amount?

Mr. STRADELLA. That is right.

Mr. ROGERS. And that is the arrangement. Was there any expense in connection with the actual selling of this policy charged to GMAC?

Mr. STRADELLA. There is the expense, of course, of writing the certificate under the policy, sending it to the customer, settling the claims, and doing the accounting involved in collecting the premiums to some degree.

Mr. ROGERS. Did GMAC then have any arrangements with the people that took out these policies, so that they would get refunds?

Mr. STRADELLA. No, none whatsoever, but what we do do, if experience happens to get better, which it has as you can see at certain times

in the past, we have asked the Prudential to adjust the premium rate downward.

Mr. STRADELLA. That is right.

Mr. ROGERS. Did GMAC pay that rate to Prudential?

ple that took out these policies, so that they would get refunds?

Mr. STRADELLA. No, none whatsoever, but what we do do, if experience happens to get better, which it has as you can see at certain times in the past, we have asked the Prudential to adjust the premium rate downward.

Now, that premium, if my recollection serves me correctly at one time was as high as 50-some-odd cents. Actually it started out in 1942 at 75 cents, and it has gone down to 65 cents, 55 cents, and then 50 cents. Currently the rate is 57.7 cents. That is based on per \$1,000 outstanding.

(Subsequently, General Motors by letter of June 26, 1961, supplemented the record as follows:)

At line 19 on page 384 of the transcript Mr. Stradella made the following statement:

"Actually it started out in 1942 at 75 cents, and it has gone down to 65 cents, 55 cents, and then 50 cents."

While we appreciate that Mr. Stradella was merely describing the periodic fluctuations in the insurance premium rate paid by GMAC during the period from 1942 to the present, we are concerned that a reader might erroneously construe this statement as indicating that the current premium rate is 50 cents per \$1,000 outstanding. Accordingly, we request that the phrase "Currently the rate is 57.7 cents" be added to the record in the manner indicated on page 384 of the attached transcript.

Mr. ROGERS. Well, suppose that I bought a General Motors product from a General Motors dealer and had to finance, say, a thousand dollars of it, and I did it through your setup, through General Motors Acceptance Corp.

Would I be required to purchase insurance on the automobile that I gave the chattel mortgage to you on?

Mr. STRADELLA. Not this credit insurance, no.

You would be required to have physical damage insurance on the car.

Mr. ROGERS. Physical damage?

Mr. STRADELLA. But not this. This is your option.

Mr. ROGERS. This is just the option?

Mr. STRADELLA. Your option, whether you want it.

Mr. ROGERS. Do you also have separate insurance by a separate corporation as to the physical damage?

Mr. STRADELLA. That is the Motors Insurance Corp. of which I spoke.

Mr. ROGERS. So all of this is more or less a group life insurance?

Mr. STRADELLA. Group creditor life insurance is what it is called.

Mr. McCULLOCH. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. McCULLOCH. I note, Mr. Stradella, that you said the credit life insurance was at the option of the buyer.

Mr. STRADELLA. Of the buyer.

Mr. McCULLOCH. Or the borrower.

Could you tell us what percentage of total contracts, for instance last year, were covered by credit life insurance?

Mr. STRADELLA. 90 percent. Now, of course, it would be higher in that you don't cover corporations. I would like to put this in the record, the premiums earned by years, since you have the refunds by years, which, as I said, totaled \$137,102,780.

By years the premiums: 1942, \$21,270; 1943, \$16,742; 1944, \$8,205; 1945, \$5,816; 1946, \$7,144; 1947, \$35,013; 1948, \$71,686; 1949, \$274,107; 1950, \$2,662,946; 1951, \$5,056,438; 1952, \$5,995,138; 1953, \$9,003,935; 1954, \$11,789,583; 1955, \$14,049,896; 1956, \$17,234,563; 1957, \$17,962,298; 1958, \$17,676,344; 1959, \$16,488,481; 1960, \$18,743,175.

(Subsequently on June 26, 1961, General Motors supplemented the record as follows:)

On pages 386 and 387 of the transcript Mr. Stradella cited the annual group creditor life insurance premiums which GMAC had paid to the Prudential Life Insurance Co. from 1942 to 1960 inclusive. Some of the figures were transcribed in round numbers and some of them were transcribed to the nearest dollar. In order that the figures will be consistent with each other and in order that their sum will equal the quoted total, we request that the figures be corrected to the nearest dollar.

Opposite the quoted premiums we have inserted black-pencil corrections which, upon rechecking, we have discovered to actually represent the correct premiums paid to the Prudential Life Insurance Co. during the period from 1942 to 1960. If it is possible to do so, we would appreciate the incorporation of the black-pencil changes into the printed record instead of the transcribed and red-pencil changes. Acceptance of the black-pencil changes will require correction to the total of the premium payments as set forth on line 2 of page 388 of the transcript.

The CHAIRMAN. Just give us the total of premiums.

Mr. STRADELLA. \$137,102,780.

(See supplemental material at pp. 569-580.)

The CHAIRMAN. Give us the total of rebates.

Mr. STRADELLA. The rebates, \$21 million—

The CHAIRMAN. Is not the rebate then 15 percent?

Mr. STRADELLA. Approximately 15 percent.

The CHAIRMAN. In other words, you gained 15 percent of the total amount of premiums paid by the car purchaser?

Mr. STRADELLA. Before allocating any expenses.

The CHAIRMAN. Before any other expenses, you get the 15 percent. What do the expenses amount to?

Mr. STRADELLA. We do not actually keep track and allocate.

The CHAIRMAN. Because they are very small, are they not?

Mr. STRADELLA. They are part and parcel of the whole system of handling a retail contract.

The CHAIRMAN. Do you tell the purchaser of a car that you get this rebate from the Prudential Life Insurance Co.?

Mr. STRADELLA. No, we do not.

The CHAIRMAN. Why do you not?

Mr. STRADELLA. We do not know that it would serve any purpose.

The CHAIRMAN. Why would it not serve a purpose? Why should there be hidden from the car owner the fact that you are making 15 percent of his premium?

Mr. STRADELLA. I do not think there is any reason for hiding it, of course.

The CHAIRMAN. One more question. In other words, if the rates of the Prudential Insurance Co. are increased for some reason or another, that means your rebate would be increased, would it not?

Mr. STRADELLA. Depending upon the experience. The rebate is entirely dependent upon the experience.

The CHAIRMAN. Have you got a copy of the arrangement you make with the car purchaser where there is indicated this contract that you have with the Prudential Life Insurance Co.

Mr. STRADELLA. We have a copy of it.

The CHAIRMAN. Can you give us the form of the contract?

Mr. STRADELLA. We can give you the form of the certificate, certainly.

The CHAIRMAN. Will you submit the form of the contract you use. (The information referred to appears at pp. 571, 594, and 618.)

Mr. STRADELLA. Yes.

The CHAIRMAN. Mr. McCulloch.

Mr. McCULLOCH. Mr. Chairman, I would like to have for the record, if possible, and I suggest that it be requested, a copy of the original arrangement GMAC had with Prudential.

(The information referred to appears at p. 594.)

The CHAIRMAN. Will you supply that, sir?

Mr. STRADELLA. Yes, indeed.

Mr. McCULLOCH. I have a few more questions in this regard. Is this insurance available to independent finance companies?

Mr. STRADELLA. From the Prudential, you mean?

Mr. McCULLOCH. Yes.

Mr. STRADELLA. I do not know. I should think so. I would think so. I would think they would be very glad to get it. They write a great deal of it.

Mr. McCULLOCH. Your former answer probably answers this question. Would you know whether their premiums were all the same, that is at the same rate for all such credit insurance, or would it depend upon the number of contracts covered each year with a given company? Would it be a variable rate?

Mr. STRADELLA. I cannot say of my own knowledge. I would think that it would depend on the experience.

Mr. McCULLOCH. We ought to get that information from Prudential.

Mr. MEADER. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. MEADER. Mr. Stradella, I note you say that you charge no commission on the sale of this insurance but pass on to the consumer the exact charge made by Prudential.

Mr. STRADELLA. Exactly.

Mr. MEADER. For the premium.

Mr. STRADELLA. Correct.

Mr. MEADER. Now, what would the normal commission be on insurance of this kind for the salesman?

Mr. STRADELLA. I do not think there is such a thing as a normal commission on this type of insurance, but there is a commission in many instances.

Mr. MEADER. If an insurance agent is selling group insurance, he certainly does not do it for nothing, does he?

Mr. STRADELLA. No.

Mr. MEADER. Do you know what the commission is?

Mr. STRADELLA. No, I do not. All I know is that some group creditor life insurance of the same type that we offer will cost \$1 per hundred per year, some will cost 75 cents a hundred, some will cost 50 cents to the purchaser, whereas we give it for 37.5 cents per hundred per year.

Mr. MEADER. But you do not know then what the brokerage commission is?

Mr. STRADELLA. Of these other people—

Mr. MEADER. Of group life insurance is.

Mr. STRADELLA. No, I do not.

Mr. MEADER. Now, the effect of your testimony, as I understand it, is that you charge no commission for writing this insurance?

Mr. STRADELLA. That is right.

Mr. MEADER. But you get your compensation in the rebates that result from the experience?

Mr. STRADELLA. If the experience is good.

Mr. MEADER. Yes.

Mr. STRADELLA. And we do not know until the year is finished or a certain period of the year usually, it is on an annual basis, whether there will be anything coming or not.

Mr. MEADER. Would it be feasible as a bookkeeping matter to pass on that rebate to the individual policyholder?

Mr. STRADELLA. No, it would not. The only practical way to handle it is the way we have done it in the past. As that rebate gets to be substantial, we ask for a reduction of the premium to the customer.

Mr. McCULLOCH. Will the gentleman yield?

Would GMAC write this insurance regardless of whether or not there were rebates from year to year?

Mr. STRADELLA. Yes.

Mr. McCULLOCH. I am very glad to hear you say that. I think that kind of insurance is desirable for those who need this form of credit.

The CHAIRMAN. You do not receive the rebate, do you?

Mr. STRADELLA. Yes, we do.

The CHAIRMAN. Do you actually deal with the retail purchaser of the car, the car owner? You do not deal with the car owner, do you?

Mr. STRADELLA. On the insurance?

The CHAIRMAN. Yes.

Mr. STRADELLA. In the case of a loss, oh, yes, we settle it ourselves.

Mr. MALETZ. Mr. Chairman?

Mr. Stradella, the purchaser buys an automobile from a General Motors dealer who intends to sell the time paper to GMAC. The dealer handles all the arrangements with the purchaser, does he not?

Mr. STRADELLA. That is correct.

Mr. MALETZ. And the dealer handles the insurance arrangements, does he not?

Mr. STRADELLA. That is correct.

Mr. MALETZ. So GMAC does not deal, does it—

Mr. STRADELLA. At that point.

Mr. MALETZ. At that point—

Mr. STRADELLA. At that point it does not.

Mr. MALETZ. With the retail purchaser.

GMAC does not initially place the insurance with Prudential in view of the fact that GMAC does not deal with the purchaser, is that not correct?

Mr. STRADELLA. That is correct.

The purchaser requests it in his contract from the dealer.

Mr. MALETZ. From the dealer?

Mr. STRADELLA. From the dealer.

Mr. MALETZ. Does the dealer get any commission?

Mr. STRADELLA. No, he does not. On this group life insurance?

Mr. MALETZ. On this group life insurance.

Mr. STRADELLA. He does not.

Mr. MALETZ. What expenses does GMAC have in those circumstances in placing this insurance?

Mr. STRADELLA. In placing the insurance originally or in placing the individual policies?

Mr. MALETZ. In placing the insurance.

Mr. STRADELLA. Of course, we have the cost of negotiating with the insurance company to begin with.

Mr. MALETZ. The cost of what?

Mr. STRADELLA. Of negotiating with the insurance company to begin with, I mean annually, and to begin with and to make the first—

Mr. MALETZ. I see.

In other words, you have overall negotiations with Prudential?

Mr. STRADELLA. That is right.

Every year as to the premium and so forth.

The CHAIRMAN. But it is the dealer who acts as sort of an insurance agent by way of inducing the car owner to take out the insurance?

Mr. STRADELLA. He asks the car owner if he wishes.

The CHAIRMAN. So when Mr. Meader asked you whether you charge anything for placing the insurance, you don't do anything of any consequence. Therefore, you are not entitled to get any money for the placing of the insurance?

Mr. STRADELLA. Yes; we do a great deal.

We issue the certificate to each individual purchaser showing that he is covered and protected.

The CHAIRMAN. But that is after the purchaser, the car owner, has arranged for the insurance?

Mr. STRADELLA. That is right.

The CHAIRMAN. And he has decided he wants the insurance and he does all that with the dealer?

Mr. STRADELLA. I thought you were asking me whether we did anything or not.

The CHAIRMAN. You do something naturally, I presume, with the Prudential Life Insurance Co.?

Mr. STRADELLA. Yes.

The CHAIRMAN. But as far as placing the insurance, it is the dealer that does that work?

Mr. STRADELLA. That is right.

We do issue the certificate. We do settle the claims, and if you know insurance, which I am sure you do, claims settlements are a costly expense.

Mr. MEADER. Mr. Chairman, might I suggest—

The CHAIRMAN. Just a minute.

Do you share any of these rebates with the dealer?

Mr. STRADELLA. We do not.

The CHAIRMAN. Do you give the impression in ads or by any pronouncements or do you directly or indirectly indicate to the car owner or to the public that General Motors Acceptance Corp. charges nothing for this service?

Mr. STRADELLA. We do not.

The CHAIRMAN. You do not.

And yet—

Mr. STRADELLA. Because we do charge for the service, for the insurance, I mean.

Mr. MALETZ. Mr. Stradella, is it not a fact that you have just testified in your prepared statement, and I quote:



"These two kinds of insurance are provided by the Prudential Insurance Co. and are offered by GMAC at the same premium costs paid by GMAC to Prudential."

Mr. STRADELLA. That is right, that is what I testified.

Mr. MALETZ. Your statement did not indicate, did it, that part of these premium costs were rebated by Prudential to GMAC?

Mr. STRADELLA. On an experience basis, no, I did not. My statement did not.

The CHAIRMAN. We had to bring that out by our cross-examination.

Mr. STRADELLA. You have.

Mr. MEADER. Mr. Chairman, may I suggest that since this point was not covered by the witnesses for the independent finance companies, that we obtain for our record the manner in which they handle insurance in connection with their financing of car sales similar to that, that Mr. Stradella has testified about GMAC, whether or not they do charge commission and get rebates?

The CHAIRMAN. We will go into that.

This was not covered by congressional committees heretofore. We took a long shot in the dark in asking this question.

Mr. TOLL. Mr. Chairman, I wanted to follow a question which was raised by Mr. McCulloch with the witness on the subject of the problem of extending this type of insurance to other purchasers and the witness said, I believe, it was available, he thought, to other persons.

Are there any State regulations with regard to the ceiling on the rate to be charged for this type of insurance?

Mr. STRADELLA. There are in certain States, yes.

Mr. TOLL. Which States cover transactions involving your contract?

Mr. STRADELLA. I do not know what the States are. I can't cite them. The States that have a ceiling on the charge is your question, is it not?

Mr. TOLL. Yes.

Mr. STRADELLA. We give this insurance in every State, or Prudential does in every State of the Union.

Mr. TOLL. You mean your contract provides that if your sale is in a State which has a ceiling on the credit rate, that you will apply that rate in that particular State?

Mr. STRADELLA. No, no, we have the one rate which I quoted which was 37½ cents.

No ceiling has ever been as low as that rate, so we have really no concern about ceilings because we are well under the ceilings.

Mr. TOLL. But the insurance company negotiates the rate with the applicant for the insurance based upon their experience?

Mr. STRADELLA. No, no.

This is an overall rate for everybody. It does not make any difference what State he is in. They give us a broad policy covering the United States at 37½ cents a hundred.

Mr. TOLL. But that rate would apply only to GMAC?

Mr. STRADELLA. It would apply to the customers, yes, the people—

Mr. TOLL. The particular customer with whom the contract was signed?

Mr. STRADELLA. If the contract was purchased by the dealer from us, I mean by us from the dealer—

Mr. TOLL. Now, if such a contract was entered into with another company, a competitor, the rate might be different?

Mr. STRADELLA. By Prudential it might be. I could not answer.

Mr. TOLL. It might be larger?

Mr. STRADELLA. It might be larger. I could not answer. I would like to repeat, though, again:

I don't know that I have made it quite clear, that our rate is the lowest rate in the business. I mean there is no question about that.

Mr. ROGERS. I think from the response that you gave to Mr. Toll's question that the contract that was made covering rebates, was made in a State where rebates are allowed under the insurance laws?

Mr. STRADELLA. Yes, that is right.

Mr. ROGERS. And you do not recall whether that was made in New York or whether Prudential—

Mr. STRADELLA. I don't know whether it is New York or New Jersey.

Mr. ROGERS. And you have never been concerned with this problem, where a State—my State for example—may prohibit rebates on any form of insurance; you have never been concerned with that, although you may sell policies in that State?

You issue certificates, put it that way.

Mr. STRADELLA. We issue certificates, that is correct. Is there a law? I don't know of any that does prohibit this kind of experience refund.

Mr. ROGERS. We are referring to it as rebates.

Mr. STRADELLA. Well, it is not exactly a rebate.

Mr. ROGERS. It is just a contractual arrangement?

Mr. STRADELLA. We are familiar with the antirebate laws; yes.

Mr. ROGERS. Thank you.

Mr. MALETZ. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. MALETZ. Is the car purchaser the actual policyholder under this life insurance plan?

Mr. STRADELLA. Technically, no. He is a holder of a certificate issued under the main policy.

Mr. MALETZ. And I take it that GMAC is the beneficiary under the policy; is that right?

Mr. STRADELLA. The policy is with GMAC; yes. The certificate is in the name of the purchaser.

Mr. MALETZ. From a practical standpoint, though, I would take it from what you have just said that the car purchaser is actually the policyholder; is he not?

Mr. STRADELLA. He is not a policyholder. We are the policyholder. The finance company is the policyholder and we issue certificates under that policy to the individual purchasers. That is technically the way it is.

Mr. MALETZ. Now, if the car purchaser were the policyholder, and in view of the fact that Prudential is a mutual company, wouldn't the car purchaser be entitled to any dividends in the event that experience indicated that the premiums were more than necessary to cover loss?

Mr. STRADELLA. You are quite right, if he were the policyholder, yes.

Mr. MALETZ. And because of this technical arrangement that you have with Prudential, the car purchaser is not legally the policyholder?

Mr. STRADELLA. The car purchaser is not legally the policyholder.  
Mr. MALETZ. And is the reason for this technical arrangement to prevent dividends?

Mr. STRADELLA. It is not.

Mr. MALETZ. Or rebates from going to the car purchaser?

Mr. STRADELLA. It is not.

Mr. MALETZ. What is the purpose of this technical arrangement?

Mr. STRADELLA. It is group insurance, and group insurance is handled that way with certificates under a major policy.

Mr. MEADER. Mr. Chairman?

The CHAIRMAN. Do you explain to the car owner or does anybody explain to the car owner what this all means? Does he know that he is not actually and technically the policyholder?

Mr. STRADELLA. Oh, yes; it is definitely specified that it is a certificate under a policy between the Prudential Insurance Co. and General Motors Acceptance Corp.

The CHAIRMAN. Does he see the policy?

Mr. STRADELLA. He does not see the policy. He sees excerpts of the policy in the certificate.

The CHAIRMAN. And he pays the premium, whatever it may be, but he doesn't see the policy except excerpts from it?

Mr. STRADELLA. The master policy, no, he does not.

The CHAIRMAN. He does not see it?

Mr. STRADELLA. That is right.

The CHAIRMAN. He buys a pig in a poke; is that it?

Mr. STRADELLA. No, he buys a certificate which is fully explanatory as to what is in the policy.

The CHAIRMAN. Who explains it to him?

Mr. STRADELLA. It is explained on the certificate. It is a piece of paper about that size [indicating].

The CHAIRMAN. And that contains portions of the policy terms?

Mr. STRADELLA. The pertinent portions, yes.

The CHAIRMAN. Who determines whether they are pertinent?

Mr. STRADELLA. I beg your pardon?

The CHAIRMAN. Who determines whether they are pertinent?

Mr. STRADELLA. I would say the insurance company determines that.

The CHAIRMAN. Does the insurance company prepare this statement which is handed to the car owner?

Mr. STRADELLA. I would say yes, they do. I can't tell you whether it is actually printed by us or by them, but they certainly approve it.

The CHAIRMAN. Will you find out, one, whether the certificate that you give to the car owner is prepared by you or by the Prudential Life Insurance Co. or both, and, second, who is the author of the exact words that are contained in the certificate. Third, will you let us have a copy of that certificate for the record.

(The information referred to appears at pp. 571 and 618.)

Mr. STRADELLA. Yes, indeed.

The CHAIRMAN. Is that agreeable, Mr. Stradella? Will you do that?

Mr. STRADELLA. I will do that; yes, indeed.

I would like to point out, Mr. Chairman, that that is the way all group policies, group life, group credit, group disability, all the group policies are handled that way. As employees we all have it.

The CHAIRMAN. You have a situation here where a man buys a car, he takes out this insurance, he signs installment notes, he does many other sundry things, and I wonder whether or not the car owner is really apprised, is made aware of all these facts?

Mr. STRADELLA. I would assure you that he is, yes.

Mr. McCULLOCH. Mr. Chairman, I would like to ask this question: Isn't this group life policy, together with the certificate that is issued either by the insurance company or GMAC, the most elementary straight life insurance?

Mr. STRADELLA. The most elementary.

Mr. McCULLOCH. It is payable only on death, is it not?

Mr. STRADELLA. Only upon death, exactly, the most elemental.

Mr. McCULLOCH. Ordinarily it does not cover disability, does it?

Mr. STRADELLA. No; that is a separate policy.

The CHAIRMAN. That is another policy?

Mr. STRADELLA. Yes.

The CHAIRMAN. That is another policy?

Mr. STRADELLA. That is another policy.

The CHAIRMAN. The same procedure is followed with the disability policy?

Mr. STRADELLA. Yes.

The CHAIRMAN. Are there any additional rebates received by General Motors Acceptance Corp.—

Mr. STRADELLA. We have not received—

The CHAIRMAN. Excuse me, let me finish.

Are there any additional rebates received by General Motors Acceptance Corp. from the writing of disability insurance?

Mr. STRADELLA. We have not received any rebates on the writing of disability insurance.

The CHAIRMAN. Are there any arrangements for the payment of rebates?

Mr. STRADELLA. I will have to check this, but my recollection is that both policies being with the Prudential, the two experiences will be put together, and that depending on the results from both the disability and the group life, the rebate will be determined.

The CHAIRMAN. Will you also put into the record the form of that contract?

(The information referred to appears at pp. 572, 619, and 633.)

Mr. STRADELLA. Yes, indeed.

The CHAIRMAN. With reference to disability?

Mr. McCULLOCH. Mr. Chairman—I should like to inquire what percentage of your contracts are written with disability insurance?

You have already testified that approximately 90 percent of your contracts are covered by straight life insurance.

Mr. STRADELLA. That, at the moment, is running at between 5 and 6 percent covered by disability. As a matter of fact, our premium volume from October 1960 to April 1961 was only \$204,000 on disability as against the \$18 million that I quoted on life insurance.

(Subsequently, on June 26, 1961, General Motors supplemented the record as follows:)

At line 15 on page 407 of the transcript Mr. Stradella used the words "our premium volume last year. \* \* \*" At this point Mr. Stradella was quoting from figures which represented the premium volume for the period from October 1960 to April 1961. In order to prevent erroneous assumptions, we request that

the words "last year" be deleted and that the words "from October 1960 to April 1961" be substituted therefor in the manner indicated on page 407 of the attached transcript.

The CHAIRMAN. Does General Motors Acceptance Corp., whose assets are over \$5 billion, and which affects the public interest, does it seek out any other insurance company to see whether or not there might be better terms than that given by the Prudential, or is that useless because as far as the car owner is concerned, it wouldn't make any difference since he doesn't get any of that rebate?

Mr. STRADELLA. We haven't searched anyone else, but we certainly would if we heard of any place where we could get cheaper premiums. We still have the lowest charge of anyone.

The CHAIRMAN. Continue your statement now.

Mr. MEADER. Mr. Chairman?

The CHAIRMAN. I am sorry.

Mr. MEADER. I am not sure but that we are dwelling on this too long, but as long as we have gone into it let me ask: This policy simply insures the unpaid balance on the car, so that there is nothing left over to go to the customer anyway, isn't that correct?

Mr. STRADELLA. That pays off the unpaid balance on the car, that is right.

Mr. MEADER. And you pay the premium.

Mr. STRADELLA. And we pay the premium.

Mr. MEADER. You pay the premium, and you are the beneficiary?

Mr. STRADELLA. Well, yes, the immediate beneficiary; yes.

Mr. MEADER. And you simply charge the customer the cost to you for that insurance?

Mr. STRADELLA. That is correct.

Mr. MEADER. Now——

The CHAIRMAN. The car owner pays the insurance eventually.

Mr. MEADER. You write into the contract when he asks for this insurance that he has to pay the cost of the premium?

Mr. STRADELLA. That is right; it is financed and eventually paid for by him.

Mr. MEADER. On which you charge no commission?

Mr. STRADELLA. On which we charge no commission.

Mr. MEADER. And I want to read from page 202 of the Senate hearings, Mr. Yntema makes the statement:

GMAC supplies credit life insurance which, I think, is perfectly appropriate. This is insurance to cover the liability in case the owner of the car dies. But GMAC supplies that at 32.5 cents per hundred, instead of \$1 a hundred.

You said your rate was lower than that of any auto finance company. You must have some other rates of other companies to compare it with.

Mr. STRADELLA. I have heard of a great many. Actually, very often the company rate, the dealer is permitted to take the company rate and mark it up and charge whatever he likes.

In other words, the dealer is negotiating with the purchaser.

Let's say that he can buy the insurance at 50 cents. There is nothing to stop him from charging 75 cents if he wants to, to the purchaser, and then buying from the finance company for 50 cents, unless the finance company refuses to do it.

Now, the rates that we hear of, of course, are the rates that are charged by the dealer to the purchaser. And we have never heard

of one as low as cars, but we have heard of them as high as \$1 per hundred per year.

Mr. McCULLOCH. Would the gentleman from Michigan yield?

I have requested the chairman to have the staff get full information on this very subject from the independent sales finance companies and automobile dealers who will testify.

I just have one more question.

Credit life insurance plans are not limited to automobile financing, are they?

Mr. STRADELLA. Oh, by no means.

Mr. McCULLOCH. They cover a broad field?

Mr. STRADELLA. Many, many banks use them.

Mr. McCULLOCH. And there should be wide experience.

Mr. STRADELLA. There is wide experience.

The CHAIRMAN. You might continue to read. I think you are on page 4.

Mr. STRADELLA. That is correct. As is customary, however, physical damage insurance on the vehicle is a requirement in the GMAC time sales contract. The purchaser who finances with GMAC may select any insurance company he wishes. If he so desires, the insurance may be placed with MIC, the physical damage insurance subsidiary of GMAC.

The CHAIRMAN. At that point, you say may be placed with MIC. Is it not a fact that most insurance placed with MIC is on GM cars financed by GMAC?

Mr. STRADELLA. Most? If you mean more than half, yes.

The CHAIRMAN. All right.

Mr. STRADELLA. But there is still a considerable amount of business written by MIC on cash sales for the dealers, on renewals of old policies, of expiring policies, on business not even financed by GMAC.

MIC will write insurance for its dealer agent on all kinds of business that he does.

Mr. McCULLOCH. Mr. Chairman, I should like to inquire whether or not there are any State laws which prohibit the furnishing of insurance in one package by GMAC when the financing is also done by GMAC?

Mr. STRADELLA. MIC is entered in every State and does business in every State of the Union.

Mr. McCULLOCH. And there is no provision by State law—

Mr. STRADELLA. No.

Mr. McCULLOCH. Which prohibits a dealer from selling a package when GMAC finances the credit and MIC furnishes the insurance?

Mr. STRADELLA. Not to my knowledge. If there were, we would not be doing it.

The CHAIRMAN. MIC does business exclusively on cars of General Motors, is that right?

Mr. STRADELLA. No, not at all.

The CHAIRMAN. I beg your pardon?

Mr. STRADELLA. Not at all. It does business exclusively with General Motors dealers except in one instance. If a General Motors dealer is canceled or if he gives up the General Motors franchise, but is an agent of MIC and he wishes to continue as an agent of MIC, he may do so regardless of whether he is still handling General Motors cars or not.

The CHAIRMAN. But it is primarily with General Motors cars.

Mr. STRADELLA. Primarily.

The CHAIRMAN. General Motors dealers.

Mr. STRADELLA. Primarily with General Motors dealers and that is the reason for its being.

The CHAIRMAN. You may proceed.

Mr. STRADELLA. I had just finished saying if he so desires, the insurance may be placed with MIC, the physical damage insurance subsidiary of GMAC. Regardless of the insurance company selected, the purchaser may also, if he wishes, have the insurance premium financed in the GMAC time sales contract.

MIC has 2,900 employees operating 142 branches in the United States and 14 in Canada. It competes with other insurance companies which offer physical damage insurance, including the physical damage insurance subsidiaries of a number of sales finance companies. In 46 States and in parts of Canada where it has agents, such agents seek business on cash sales as well as time sales, whether the dealer uses GMAC or not, and solicits renewal business on both.

The CHAIRMAN. You know, Mr. Stradella, we do not wish to interfere with the business of GMAC. We simply want a divorcement of GMAC from General Motors. So these employees would still continue in business and GMAC would still have its 142 branches in the United States and 14 in Canada.

Mr. STRADELLA. I would not know.

The CHAIRMAN. I beg your pardon?

Mr. STRADELLA. I say I would not know.

Mr. MALETZ. Mr. Chairman?

On this question of insurance, may I ask you this further question. Mr. Stradella: Motors Insurance Corp. (MIC) is a wholly owned subsidiary of GMAC; is that correct?

Mr. STRADELLA. That is correct.

Mr. MALETZ. Now, is it not a fact that MIC is the largest automobile insurance company in the United States in the writing of physical damage insurance?

Mr. STRADELLA. I am not sure whether Allstate has passed MIC on that or not. There was a time when it was, that I do know. I am under the impression that Allstate has passed Motors Insurance Corp., but I am not sure.

Mr. MALETZ. It is either No. 1 or No. 2.

Mr. STRADELLA. I would say that is probably correct.

Mr. MALETZ. In addition to that, General Exchange Insurance Co. (GEIC) is also part of the General Motors system, is it not?

Mr. STRADELLA. Yes.

Mr. MALETZ. And is it correct that until 1960, GEIC was a wholly owned subsidiary of General Motors?

Mr. STRADELLA. It was in 1960. The ownership of it varied over a period of years, but in 1960 you are quite correct.

Mr. MALETZ. What in general is the business of GEIC?

Mr. STRADELLA. GEIC is now merged into Motors Insurance Corp.

Mr. MALETZ. I beg your pardon. What was the nature of its business?

Mr. STRADELLA. It did two things. It insured directly in four States in which it is either impossible or very difficult to license the dealers

as agents, and it insured at a premium which was net of the usual commission that a dealer receives, or an agent receives.

The other thing it did was that it reinsured a certain percentage of the Motors Insurance business.

Mr. MALETZ. I see. And as I understand it, in 1960 MIC and GEIC were merged as a wholly owned subsidiary of GMAC; is that right?

Mr. STRADELLA. That is correct.

Mr. MALETZ. When a General Motors dealer provides a customer with GMAC financing, is it normal procedure for the buyer also to purchase insurance through one of the General Motors controlled insurance companies?

Mr. STRADELLA. I do not know exactly what you mean by "normal." I will give you the figure that approximately—

Mr. MALETZ. Well, may I just ask this question to put this in context, because of the vagueness of the word "normal." Is it or is it not correct that of the total number of new GM cars financed by GMAC, over 80 percent are insured by GMAC insurance companies?

Mr. STRADELLA. That is incorrect.

Mr. MALETZ. What is the figure, sir?

Mr. STRADELLA. Approximately 50 percent.

Mr. MALETZ. Approximately 50 percent?

Mr. STRADELLA. Yes. It may be 51, 52. It is right in that area.

Mr. MEADER. Mr. Stradella, when you said that it was either the No. 1 or No. 2 insurance company, MIC, I mean—

Mr. STRADELLA. Physical damage.

Mr. MEADER. Were you including the various insurance exchanges affiliated with the automobile association? I mean if you total up the various interinsurance exchanges affiliated with the auto clubs, wouldn't they be larger than either?

Mr. STRADELLA. Not as I understand it on physical damage insurance, which is damage to the automobiles.

Mr. MEADER. Collision insurance?

Mr. STRADELLA. Just physical damage. We are not talking about liability or anything else, just physical damage.

Mr. MALETZ. Mr. Stradella, the staff report of the Senate Antitrust Subcommittee stated as follows—this report was issued in 1956, and I quote from page 74:

The statistical information supplied by General Motors to the subcommittee disclosed that of 748,481 General Motors new cars financed by GMAC in 1954, 611,515 were insured by either one of the GMAC insurance companies. Insurance was written on 100,835 units sold by GM dealers but not financed by GMAC and 1,401,154 used automobiles sold by the company's dealers were insured by the family of companies.

Were these the facts as of 1954?

Mr. STRADELLA. Undoubtedly; if we supplied them to the committee, they undoubtedly were.

Mr. MALETZ. And the percentage, I take it then—

Mr. STRADELLA. The percentages as of today, I have them in front of me, are 49 percent of the new car contracts and 77 percent of the used car contracts.

Mr. MALETZ. Thank you.

Mr. STRADELLA. Those are the exact figures.

Mr. MALETZ. Is it correct that in 46 States General Motors dealers are licensed agents for GMAC insurance companies?



Mr. STRADELLA. That is correct.

Mr. MALETZ. And General Motors dealers receive commissions, do they not, from insurance sales written through GMAC?

Mr. STRADELLA. Through MIC.

Mr. MALETZ. Written through MIC, I beg your pardon.

Mr. STRADELLA. Through MIC.

Mr. MALETZ. And does the General Motors dealer obtain a commission of about 25 percent on the sale of MIC insurance?

Mr. STRADELLA. It is 20 percent on the first year if it is written for 1 year, and if it is written for longer, on the additional years, it is 25 percent.

Mr. MALETZ. Is it possible for a General Motors dealer to sell his installment paper to an independent sales finance company and yet obtain insurance through MIC?

Mr. STRADELLA. Yes.

Mr. MALETZ. Does that happen very often?

Mr. STRADELLA. Not too often, but it does happen. You see, a great many of the General Motors dealers do what we call split their business. Now, they will write—very often write all their insurance with Motors Insurance Corp., all of it, and yet split their business between GMAC and independent sales finance companies or the banks or whoever it is.

Mr. MALETZ. But I take it as a general rule when the General Motors dealer sells his paper to GMAC, that dealer would also write the insurance on that car through MIC.

Mr. STRADELLA. I have given you the figure. It is about 50 percent.

Mr. MALETZ. Yes.

Mr. STRADELLA. I have given you that figure. Now, obviously, if you have an agent, an insurance company, an agent, and he sends you a policy which he has taken as an agent, you are going to take it regardless of whether it is cash or finance or who finances it. He is your insurance agent.

Mr. MALETZ. I think you have already answered the question, but to make it clear, does MIC write insurance for automobiles sold by non-General Motors dealers?

Mr. STRADELLA. In the instance of the dealer having---

Mr. MALETZ. In the exceptional instance that you have noted.

Mr. STRADELLA. In the instance that I have noted where he has been an agent. No; MIC does not just go out and license non-General Motors dealers as agents; no.

Mr. MALETZ. With that exception, MIC limits itself to writing insurance on cars financed through GMAC?

Mr. STRADELLA. No, no; not financed through GMAC.

Mr. MALETZ. I beg your pardon?

Mr. STRADELLA. Sold by General Motors dealers.

Mr. MALETZ. Yes. Let me ask you this question: Is it or is it not a fact that in the event damage occurs to a car during the life of a policy written by one of the General Motors insurance companies, an effort is made by the adjuster of these companies to have the car repaired by a General Motors dealer?

Mr. STRADELLA. The facts of the matter are about like that. Approximately 65 percent of the cars that are damaged that are returned are in the hands of the dealer who is fixing the car before our insurance company knows anything about it. That is No. 1.

Now, if the adjuster is asked or if anybody in the company is asked for a suggestion as to where the car might go, it is suggested, if convenient, that it be returned to the dealer agent who originally sold him the car. If the purchaser wishes to do it somewhere else, that is perfectly all right, too.

Mr. MALETZ. In other words, the General Motors insurance companies suggest that cars which they insure should be repaired by the General Motors dealer who makes the sale; is that right?

Mr. STRADELLA. If requested for a suggestion; yes.

Mr. MALETZ. Now, several years ago Mr. Lukes, president of MIC, testified before the Senate Antitrust Subcommittee; did he not?

Mr. STRADELLA. He did.

Mr. MALETZ. And did he not testify that wherever possible, MIC attempts to have the cars repaired by the selling dealers?

Mr. STRADELLA. I do not know. I know of the time when he did it. I have not got the testimony in front of me.

Mr. MALETZ. Has the policy of MIC changed in that period?

Mr. STRADELLA. No; it has not. If he said that was the policy, that was the policy, and it has not been changed.

Mr. McCULLOCH. Mr. Chairman, I cannot refrain from saying that over a long time that might be in the best interests of the public.

Mr. STRADELLA. It is. I mean the public naturally is going back to the agent for the automobile.

Mr. McCULLOCH. Well, it may have a longtime beneficial influence on the premiums that are charged for physical damage to an automobile.

Mr. STRADELLA. Yes; I should think it would have a very longtime influence on the purchaser's happiness, too, to get his car——

Mr. ROGERS. Mr. Chairman.

Did I understand you to say that if I had a policy with MIC and the car was damaged and needed repairs, that I have the privilege of selecting the man who would do the repair work?

Mr. STRADELLA. You have.

Mr. ROGERS. That is news to me because when I was practicing law, when a fellow's automobile was damaged, and if he had to have it repaired, they would say: "Now, look; read the fine print here."

Mr. STRADELLA. There is no fine print to that effect whatsoever.

Mr. ROGERS. No fine print in yours?

Mr. STRADELLA. None.

Mr. ROGERS. And if I had a policy with MIC, and got in a wreck, I could go to anybody and get it fixed up?

Mr. STRADELLA. Anybody you liked.

Mr. ROGERS. And you would pay the bill?

Mr. STRADELLA. That is right. We would pay the bill if it was reasonable, of course.

Mrs. ROGERS. What is that?

Mr. STRADELLA. It has to be a reasonable bill, but, of course, we pay it.

Mr. ROGERS. Well, now, it has to be reasonable. It has to meet with the specification of your adjuster is what you mean; does it not?

Mr. STRADELLA. No; I mean that the price for labor, for example, has got to be the going price for labor and the price for parts has got to be the going price for parts.

Mr. ROGERS. Do you determine that after the bill is presented or before?

Mr. STRADELLA. During the process of the adjustment. That is the way it is done. You usually agree on a price with the repairer.

Mr. ROGERS. The only one that I ever heard agree upon is: "We will go out here and get some bids."

Mr. STRADELLA. We do not do that.

Mr. ROGERS. You do not do that?

Mr. STRADELLA. We do not use the bid system; no.

Mr. ROGERS. You do not do that any more?

Mr. STRADELLA. We do not do it.

Mr. ROGERS. Did you ever do it?

Mr. STRADELLA. No, we have not done it.

Mr. MALETZ. Mr. Stradella, Mr. Lukes testified—and his testimony is summarized in the Senate staff report in the study of General Motors—that wherever possible the insurance companies do attempt to have the cars repaired by the selling dealers, and stated that in a given area, out of approximately 600 claims, 73.7 percent took their damaged cars to the selling General Motors dealer; 14.7 percent agreed to have the damaged car returned to the selling dealer when the MIC-GEIC adjuster requested permission to do so; and 11.6 percent "preferred" to have cars repaired in a repair shop not that of a General Motors dealer.

Do you have any reason to dispute the accuracy of this testimony by Mr. Lukes?

Mr. STRADELLA. None at all. Would you like to have it up to date?

Mr. MALETZ. I beg your pardon?

I would like to ask you this question: Is not this repair business an added source of income to the General Motors dealer?

Mr. STRADELLA. I should think so.

Mr. MALETZ. Yes. And is this not an additional incentive for the General Motors dealer to write the insurance with MIC?

Mr. STRADELLA. I should think so.

Mr. MALETZ. Does not this pattern of activity by MIC with its adjusters operate to the competitive detriment of independent auto repair shops seeking to compete with General Motors dealers?

Mr. STRADELLA. I do not think so.

Mr. MALETZ. Why not?

Mr. STRADELLA. I just do not think so.

Mr. MALETZ. Just tell us why.

Mr. STRADELLA. Here is the situation: In 1961, 10,000 claims reviewed. Automobile located in the dealer's shop or the dealer in process of getting it when the loss was reported to MIC, 6,351. That is 63.5 percent that was already in there being worked on practically when we found out about it. We had nothing to do with it.

Automobile not located in dealer's shop, nor dealer in process of getting it when loss was reported, but repaired by the General Motors dealer eventually with the insured's approval, that is another 15.6 percent.

Automobile not located in the dealer's shop, nor dealer in the process of getting it when loss was reported to MIC and repaired finally by the general repair shop, 20.9 percent.

Those are the figures for 1961, bringing Mr. Lukes' figures up to date.

The CHAIRMAN. Mr. Meader?

Mr. MEADER. Mr. Stradella, might I ask:

Is it not perfectly natural for a car owner who liked a particular dealer well enough to do business with him and to buy the car, to take it back there for service and to take it back there for any repairs?

Mr. STRADELLA. I think it is the most natural thing in the world.

Mr. McCULLOCH. Let me ask one other question.

Mr. STRADELLA. That is proven by those figures, I mean.

Mr. McCULLOCH. Do your representatives encourage independent garages to repair automobiles financed by your company when they can do it cheaper?

Mr. STRADELLA. Do we encourage?

Mr. McCULLOCH. Yes.

Mr. STRADELLA. No, we do not.

Mr. McCULLOCH. Do you discourage creditors from going to independent dealers where they may have their automobiles repaired there more cheaply?

Mr. STRADELLA. If they wish to go there, they may go there.

If they ask us where we would like to have them go, we suggest that they go to the dealer from whom they bought the car, but we have no prohibition against independent garages at all.

Mr. McCULLOCH. Do you use any coercive means of any kind whatsoever, subtle or otherwise, other than you have testified to this morning, to have automobiles which you have financed repaired by the dealer?

Mr. STRADELLA. We do not.

Mr. MALETZ. Mr. Chairman?

Mr. Stradella, you have testified two or three times that you do suggest—

Mr. STRADELLA. Upon request.

Mr. MALETZ. That you do suggest?

Mr. STRADELLA. Yes.

Mr. MALETZ. Upon request that the insured have his car repaired at a General Motors dealer, is that right?

Mr. STRADELLA. We ask him if he would agree to that, and if he agrees, yes.

Mr. MALETZ. The insurance company is the one that pays for the loss, is it not?

Mr. STRADELLA. The insurance company is the one that pays for the loss.

Mr. MALETZ. And a suggestion from the insurance company is quite important, is it not, so far as the insured is concerned?

Mr. STRADELLA. I should think the insured would pay some attention to it, yes.

Mr. MALETZ. Any suggestion from an insurance company is quite important, is it not?

Mr. STRADELLA. Well, I, as an insured, would pay attention to it, yes.

Mr. MALETZ. So the suggestion can have a great deal of weight, can it not?

Mr. STRADELLA. You have 63 percent of the people that go automatically, as they naturally and normally would, to the dealer, so you cannot infer that we are coercing a great many people.

Mr. MEADER. As a matter of fact, in your figures for 1960, out of those cars which were not in the dealer's possession at the time of the loss, 2,092 went to non-General Motors dealers for their repairs while only 1,557 were persuaded by you to go to General Motors!

Mr. STRADELLA. That is correct.

The CHAIRMAN. Continue reading.

Mr. STRADELLA. Concerning its relationship with General Motors Corp., GMAC made the following statement to the Senate Subcommittee on Antitrust and Monopoly in December 1955 ("A Study of the Antitrust Laws," p. 4022) :

We would like to make it entirely clear that GMAC stands on its own feet in all areas of operation. It is not subsidized or supported in any way by General Motors Corp. other than by capital funds and through sound advice from its three board members who are executives of General Motors Corp. It is not pressured in any way on its policies or practices by anyone who is a director or employee of General Motors Corp.

In its association with General Motors Corp., GMAC may have advantages. In all probability, there are dealers who are influenced by the assurance of continuity of service, community of interest, fair treatment, et cetera, which go with the association. Lenders are influenced by the assurance of adequate capitalization, sound management, and conservative financial policies and practices. On the other hand, unless these advantages were supported by the record of GMAC and its aggressive pursuance of sound practices, the association would do it little good in the eyes of the parties concerned.

The CHAIRMAN. Let us see what that record really is.

I wonder whether it is as pious as you seem to indicate here.

Judge Loevinger testified yesterday as follows:

In 1938 a criminal case charged violation of section 1 of the Sherman Act was tried on the merits and resulted in a conviction of General Motors and GMAC. The conviction was sustained on appeal. Certiorari denied in the Supreme Court. Rehearing denied.

The Government proved that defendants had been coercing GM dealers to use the financing of GMAC at wholesale and retail levels and had been discriminating against other sales finance companies. The coercion and discrimination were effectuated by such means as threats to cancel and actual cancellation of dealers' franchises for not giving their finance business to GMAC; GM's withholding delivery of cars where they are in short supply or delivery of excess cars or cars of wrong model or color in periods of overproduction to noncooperating dealers, and defendants arranging matters so that independent sales finance companies could not get or were delayed in getting necessary title instruments for financing GM dealers.

In addition let me note this. In 1937 the Federal Trade Commission issued a complaint against General Motors charging it with coercive practices exerting upon its dealers which restricted their rights to purchase parts and accessories from independent sources. The complaint alleged that General Motors had forced its dealers to buy accessories and supplies from General Motors to the exclusion of competing sellers through the use of intimidation, oppression, and coercion, including the threat of cancellation and actual cancellation of new car selling agreements. On November 12, 1941, after more than 7 years of investigation and 4 years after issuance of the complaint, the Commission entered a cease and desist order against General Motors. General Motors filed an appeal with the U.S. Court of Appeals for the Sixth Circuit, but subsequently withdrew the appeal.

Congressional hearings were held in the 84th Congress in 1955 and those hearings reviewed widespread complaints by General Motors dealers charging General Motors with coercion and intimidating their franchised dealers. This resulted in the so-called O'Mahoney-

Celler Automobile Dealers Act. In that hearing the automobile dealers complained that they had been subjected to economic duress and intimidation by General Motors as well as other manufacturers and were unable to obtain redress in the courts.

In 1939 the Federal Trade Commission found that an advertising campaign conducted by General Motors and GMAC was misleading and deceptive and caused trade to be unfairly diverted to the two companies. The advertising program involved the so-called 6-percent plan of auto financing under which the unpaid balance on the car was multiplied by 6 percent in order to compute the interest. The Commission found that the advertisements intended to mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that its said 6-percent finance plan contemplates the simple interest charge of 6 percent per annum upon the deferred and unpaid balances of the purchase price.

General Motors appealed to the Court of Appeals for the Second Circuit. That court affirmed the finding of the Federal Trade Commission that the existing program of General Motors and GMAC was false and misleading. Judge Learned Hand on behalf of the Court of Appeals stated "It is noteworthy that the plan involves such competitive advantages that rival companies doing a large portion of the business of the country felt obliged to adopt and to advertise it with emphasis on the 6-percent symbol."

There is now pending a civil antitrust suit against General Motors charging monopolization in the manufacture and sale of buses. One of the charges is that General Motors has used its subsidiary GMAC as a weapon of monopolization by extending preferential financial terms which competitors could not meet.

This last paragraph was taken from the testimony of Judge Loevinger yesterday.

Judge Loevinger continued:

In another pending civil antitrust suit against General Motors involving its acquisition of Euclid Road Machinery Co., a manufacturer of over-the-road earthmoving equipment, the Government may rely among other things on GM ownership of GMAC's giving it a competitive advantage over other manufacturers. In another field, railroad locomotives, an indictment has recently been returned against GM charging monopolization in the manufacture and sale of diesel locomotives. GM's financing and sale of locomotives on terms its competitors could not profitably match is alleged as one of the means used to effectuate the monopolization.

Now that record shows the picture is a little different than the statement that you just made, there is more in the picture than continuity of service, community of interest, fair treatment, sound management and conservative financial policies and practices.

There is in this picture coercion, and it was through this coercion for which your company and General Motors were convicted, that you built up, in my humble opinion, a decided competitive advantage over all other auto manufacturers and auto finance companies. Those advantages from your past record are still with you.

Now, do you care to comment on that rather long statement?

Mr. STRADELLA. With respect to which part, sir?

The CHAIRMAN. I beg your pardon?

Mr. STRADELLA. With respect to which part?

I gather that most of what you repeated is in the record of yesterday, I believe.

The CHAIRMAN. Do you want to amplify on the statement that you made which was a repetition of the statement made before the Senate committee?

Mr. STRADELLA. No; I would like to say——

The CHAIRMAN. Other than what I indicated in light of the record?

Mr. STRADELLA. No. I would only like to say that you expressed an opinion with which I do not agree.

The CHAIRMAN. Do you disagree with the court's opinion? The court rendered an opinion in these cases on the matter of coercion.

That opinion was confirmed by the Supreme Court of the United States.

Mr. STRADELLA. It was. I accept that it was.

The CHAIRMAN. I beg your pardon?

Mr. STRADELLA. I accept that it was, yes.

The CHAIRMAN. Two courts found coercion. Certiorari was denied by the Supreme Court.

Now, do you agree with the decisions of those courts?

Mr. STRADELLA. I will go so far as to say that your facts are correct. You state correct facts, yes.

Mr. McCULLOCH. Mr. Chairman, weren't those coercive practices enjoined by the decree?

Aren't they still enjoined? And, further, the Government decided that it could not successfully prosecute its suit which sought divestiture or divorcement. Isn't this at least part of the proof, that, if the things which are mentioned in the Chairman's statement are all wrong, this bill is not the approach which will right all the wrongs.

The CHAIRMAN. That is not the thrust of my question, I will say to the gentleman from Ohio.

I said that as a result of this past record which was exemplified in these cases, and proven as evident from the decisions of these courts, there was a built-in competitive advantage that inured to General Motors and General Motors Acceptance Corp. This gave them a tremendous leverage, and a very decided inordinate advantage over all competitors both finance companies and automobile manufacturers.

It isn't a question of whether or not their continuance of these practices should receive the attention of the Department of Justice.

Of course this should receive their attention, and I hope it is receiving their attention.

But at this juncture I am asking the question whether or not that past record did not give GM and GMAC a decided competitive advantage which still inures to them.

Mr. McCULLOCH. It would have been very helpful to me, in view of the record, if the Government had pressed for the relief which it originally thought it might have. The Government must have discovered something in the evidence that convinced the Government it was pursuing a losing cause. I have confidence in the Justice Department. They would have proceeded if they had the evidence.

The CHAIRMAN. I thoroughly agree that the Department of Justice should have been more vigilant in this matter.

Mr. MEADER. But, Mr. Chairman, the question which you asked Mr. Stradella to comment on was of the litigation which resulted in the prohibition against these coercive practices.

But now you seem also to have implied that the court said the very relationship was per se wrong, and I don't think that has been said.

The CHAIRMAN. I simply asked, the question, Mr. Meader, whether this past record of coercion and intimidation that didn't give GM and GMAC presently a very decided advantage over all its competitive companies in the automotive business.

Mr. MEADER. Let's ask Mr. Stradella.

The CHAIRMAN. I did ask.

Mr. MEADER. Do you regard the relationship between GMAC and GM as giving you an inordinate competitive advantage.

Mr. STRADELLA. I do not.

The CHAIRMAN. That is not the question.

Mr. STRADELLA. I will attempt to answer your question.

The CHAIRMAN. I asked whether or not these coercive practices, this intimidation, did not give you this advantage.

Mr. STRADELLA. No. I do not agree with you. I do not think so, if you are asking me for my opinion.

Mr. MEADER. The coercive practices are enjoined. If they are continued, contempt proceedings can cure that ill, and this legislation won't reach it.

The CHAIRMAN. I have given you the answer. I am afraid I cannot give you the understanding. I said that these coercive practices, this intimidation enabled these two companies to achieve a paramount position, a position of dominance, a built-in advantage which is inordinate and which inures to them to this very day.

Mr. Maletz asked Mr. Loevinger yesterday :

Now, these coercive activities of General Motors on its dealers, did they result in part in GMAC obtaining a dominant position in the automobile sales financing industry.

Mr. LOEVINGER. Well, from reading the report of the case and the facts are set out in some detail in the citation I gave of the opinion of the Court of Appeals from the Seventh Circuit, I would believe that a substantial part of GMAC's dominant position was the result of the exercise of the coercive tactics of GM.

That is the opinion of the Department of Justice.

Mr. STRADELLA. That is the opinion of the judge, I believe.

The CHAIRMAN. Of Judge Loevinger. And continuing further. I am reading from page 266 :

As a result of such tactics—

Judge Loevinger continued—

which are laid out in considerable detail in the opinion of the court, GMAC was established in its position as the dominant financing agency for General Motors cars and General Motors dealers.

I think this is quite clear in the record.

You may proceed.

Mr. STRADELLA. The statement which I read as a quote from a hearing in 1955 is still appropriate and correct.

Being unable to prove that GMAC is directly subsidized by General Motors Corp. in anyway, the principal supporters of the legislation have resorted to an allegation that there is an indirect subsidy called by them capital subsidy (see American Finance Conference document entitled "A 'White Paper' on Automobile Financing").

It is alleged therein that General Motors Corp. undercapitalizes GMAC; that it can do so without interfering with the GMAC borrowing capacity by implying to lenders that both General Motors Corp. and GMAC are behind the GMAC obligations; that, if General



Motors Corp. did not do this, GMAC would have to earn more money on greater capital and would, therefore, have to charge more for its services. Therefore, they say that a form of subsidy exists.

The facts are:

(1) General Motors Corp. does not guarantee or stand behind GMAC obligations and does not imply that it does.

The CHAIRMAN. Is it not true that while General Motors does not guarantee GMAC obligations, it stands aside as sort of a benevolent benefactor, as sort of a loving parent of GMAC, and surely the insurance companies and banks loaning to GMAC are conscious of that relationship at all times, are they not?

Mr. STRADELLA. They are conscious; oh, definitely, yes. I have mentioned that, I think, in my previous remarks.

(2) GMAC is not undercapitalized. Its capital requirements are determined by its board after consultation with various lenders, underwriters, and so forth, and are maintained at whatever level is considered adequate to protect the investors in its securities.

In the light of this, no basis for a "capital subsidy" allegation exists.

#### POSITION OF GMAC IN THE AUTOMOBILE FINANCING BUSINESS

With respect to the GMAC participation in retail installment financing, there have been assertions by those who favor this legislation which must, in all fairness, be corrected. They cite GMAC participation in this business out of all proportion to the actual fact.

According to Federal Reserve Board figures, approximately \$18 billion of automobile installment credit was extended in 1960 by all sources of such credit, distributed as follows:

	<i>Percent</i>
Commercial banks.....	46
Other sales finance companies.....	23
GMAC.....	18
Credit unions, small-loan companies, etc.....	13
Total.....	100

These are facts on record upon which there can be no disagreement.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt Mr. Stradella at this point. Is the percentage, which is being secured by commercial banks, decreasing or increasing over the last 5 years?

Mr. STRADELLA. The last 4 or 5 years it has increased.

Mr. McCULLOCH. What has been the trend of acquisition of paper by other sales finance companies during the last 5 or 10 years?

Mr. STRADELLA. That has decreased to about the same degree and there has been a slight increase, very slight, in credit unions. The participation of the commercial banks has increased to about the same extent as the decrease in sales finance companies other than GMAC.

Mr. McCULLOCH. Does that mean that GMAC has remained fairly stable?

Mr. STRADELLA. Stable as a percentage of the total, yes. I think I bring that out as I go along.

Mr. MALETZ. Mr. Chairman?

Mr. Stradella, the fourth category in your table comprises credit unions, small-loan companies, and so forth. Is it not a fact that credit

unions and small-loan companies primarily extend credit directly to the retail purchaser?

Mr. STRADELLA. That is correct.

Mr. MALETZ. On the other hand, sales finance companies such as GMAC purchase the installment paper of dealers; is that not correct?

Mr. STRADELLA. That is correct, for the most part, though I think there are some—

Mr. MALETZ. Yes. In other words, is it not a fact that credit unions and small-loan companies are in a different type of business than GMAC and other sales finance companies?

Mr. STRADELLA. Broadly speaking, yes.

Mr. MALETZ. As a matter of fact, sales finance companies rarely if ever extend credit directly to the retail purchaser, but almost exclusively engage in the purchase of installment paper from dealers; is that not right?

Mr. STRADELLA. Yes; I think there are some and gradually it is becoming more and more so, who do extend at the retail level, but broadly speaking you are right.

Mr. MALETZ. Much of the credit extended by banks is also on the basis of direct loans to car purchasers; is that not right?

Mr. STRADELLA. I did not hear the first part of the question.

Mr. MALETZ. Much of the credit extended by banks is also on the basis of direct loans to car purchasers?

Mr. STRADELLA. About 37 percent.

Mr. MALETZ. What percent?

Mr. STRADELLA. About 37 percent. About 63 percent is done the same way that the sales finance companies do it.

Mr. MALETZ. You testified that 46 percent of total auto installment credit is provided by banks. Of that amount, what percentage constitutes direct loans to car purchasers and what percentage constitute purchase of installment credit from dealers?

Mr. STRADELLA. That is the figure I just gave you, 63 percent is the purchase of the contracts in the same way that is done by the sales finance companies as you outlined, and the balance of 37 percent is done on the direct basis with the purchaser.

Would you please repeat the question? I may not have understood it.

The CHAIRMAN. Is that 37 percent of the 46 percent?

Mr. STRADELLA. That is correct, 37 percent of the 46 percent is direct.

Mr. MALETZ. 37 percent of 46 percent represents purchases by banks of paper from dealers; is that right?

Mr. STRADELLA. No, no; 63 percent represents purchases by banks.

Mr. MALETZ. 63 percent?

Mr. STRADELLA. 63 percent, purchases from dealers.

Mr. MALETZ. 63 percent of 46 percent represents purchases by banks of paper from dealers?

Mr. STRADELLA. 63 percent of the business done by the banks is done by the same basis as the sales finance companies do it.

The CHAIRMAN. These figures require a lot of explanation, then.

Mr. STRADELLA. No, they do not.

Mr. MALETZ. In other words, your table lumps together direct extensions of retail credit to purchasers and the discount purchase of installment contracts from dealers; is that not right?

Mr. STRADELLA. Let me give you the figures.

Mr. MALETZ. Is that not right?

Mr. STRADELLA. If you want to break down the 46 percent between direct and indirect, it is 29 indirect and 17 direct, making 46.

Mr. MALETZ. I wonder if you would answer this question?

Mr. STRADELLA. Did you get that point?

Mr. MALETZ. I did not because I was concentrating on the question.

Mr. STRADELLA. I would like to repeat it later.

Mr. MALETZ. Is it not a fact that your tables—I am talking about your table at page 6 of your statement—lump together direct extensions of retail credit to purchasers and the discount purchase of installment contracts from dealers?

Mr. STRADELLA. Yes.

Mr. MALETZ. I believe, sir, that you wanted to make a further statement?

Mr. STRADELLA. I beg your pardon?

Mr. MALETZ. I think you wanted to present some additional figures.

Mr. STRADELLA. Yes.

I wanted to make the point that of that 46 percent, I think it merely confirms what you are saying, but breaking down the 46 into 29 and 17, 29 is business done in the same way as sales finance companies and GMAC do it, and 17 percent might be compared to the way credit unions, small loan companies, and others do it.

The net effect, of course, is the same. Credit is being extended for the purchase of an automobile.

Mr. MALETZ. Now, if we consider only the business of purchasing sales installment contracts, what figures should be substituted for the figures that you have presented in your table, the second paragraph, page 6?

Mr. STRADELLA. I am not sure I understand what you mean.

The CHAIRMAN. Fifty-six percent does not represent purchases by banks?

Mr. STRADELLA. From dealers?

The CHAIRMAN. From the dealers?

Mr. STRADELLA. No.

The CHAIRMAN. It is only 63 percent of 46 percent, which is——

Mr. STRADELLA. Twenty-nine percent.

The CHAIRMAN. Twenty-nine percent?

Mr. STRADELLA. That is correct.

The CHAIRMAN. So the 29 might well be substituted for the 46?

Mr. STRADELLA. No, not substituted. You can break it down just the same way——

Mr. MALETZ. You have another table——

Mr. STRADELLA. If we put 13 for credit unions, we would have——

Mr. MALETZ. You would have to strike out the 13 percent for credit unions entirely?

Mr. STRADELLA. You would have to take that out, too, if you want to get down to purely the indirect.

Mr. MALETZ. What would the percentages be, eliminating from this table direct extension of credit to borrowers?

Mr. STRADELLA. I don't know. I haven't figured them.

Mr. MALETZ. Could you recompute that table on that basis?

Could you recompute that table on that basis?

Mr. STRADELLA. You could make that table, yes; but it has nothing to do with the point that I am trying to make.

Mr. MALETZ. The point that I think you have already made is that credit unions and small loan companies which extend credit directly to the purchaser—

Mr. STRADELLA. You made that point, with which I agreed.

Mr. MALETZ. You agreed?

Mr. STRADELLA. I agreed with it; yes.

Mr. MALETZ. Are not engaged in the same type of business as sales finance companies such as GMAC?

Mr. STRADELLA. They do not do it the same way. I did not say it was not the same type. They do not do it the same way.

Of course, it is the same type. It is enabling somebody to buy an automobile on credit.

Mr. MALETZ. They are two entirely different types of transactions, are they not?

Mr. STRADELLA. It depends what you mean by "type." They are for the same purpose. The purpose is the same.

Mr. MALETZ. Does the sales finance company extend credit directly to the borrower?

Mr. STRADELLA. In some cases only, yes.

Mr. MALETZ. In what percentage of cases?

Mr. STRADELLA. I do not know.

Mr. MALETZ. In what percentage of cases does GMAC extend credit directly—

Mr. STRADELLA. None.

Mr. MALETZ. To a retail car purchaser?

Mr. STRADELLA. None.

Mr. MALETZ. In no case?

Mr. STRADELLA. None.

Mr. MALETZ. And do you have reason to believe that your practice in this respect differs in any material way from the practice followed by your competing companies?

Mr. STRADELLA. You will have to define "competing companies," please.

Mr. MALETZ. Independent sales finance companies.

Mr. STRADELLA. All of them, you mean, as a group?

Mr. MALETZ. I beg your pardon?

Mr. STRADELLA. All of them you are talking about?

Mr. MALETZ. Independent sales companies.

Mr. STRADELLA. The whole group?

Mr. MALETZ. Yes.

Mr. STRADELLA. I think it is variable. There is a great deal of it done today by smaller sales finance companies. If you want to talk about the larger ones, not so much, no.

Mr. MALETZ. I see.

In general, then, sales finance companies purchase—

Mr. STRADELLA. Contracts.

Mr. MALETZ (continuing). Contracts from dealers?

Mr. STRADELLA. Correct.

Mr. MALETZ. And this is not a business in which credit unions and small loan companies engage, is that not correct?

Mr. STRADELLA. I do not know.

Mr. MALETZ. Have you ever heard of a small loan company or a credit union purchasing a sales installment contract from a dealer?

Mr. STRADELLA. I don't think I have, no. I don't think I am any authority.

Mr. MALETZ. You have been in the business a great number of years, have you not?

Mr. STRADELLA. Yes.

Mr. MALETZ. And you have never heard of a small loan company, have you, purchasing a sales installment contract from a dealer?

Mr. STRADELLA. I never have, but I don't follow small loan companies very closely.

Mr. MALETZ. You would know industry practice pretty well, would you not?

Mr. STRADELLA. I doubt it.

Mr. MALETZ. On the basis that I have suggested, could you prepare a table similar to the one that you have already presented to the committee showing percentages of participation in the business of buying sales installment contracts by commercial banks, other sales finance companies and GMAC?

Mr. STRADELLA. Oh, yes.

Other sales finance companies, I am not sure how much they do.

Mr. MALETZ. Assuming that—

Mr. STRADELLA. That they are just the same as we are, yes, those figures are available with the Federal Reserve Board.

Anyone can prepare that table; yes.

Mr. MALETZ. Could you submit that table, sir?

Mr. STRADELLA. I certainly could.

The CHAIRMAN. In any event, from your tables we gather that when it comes to the purchase of installment contracts from dealers, when we consider commercial banks, the figure must be reduced from 46 to 29 percent?

Mr. STRADELLA. Using this as a hundred, yes.

The CHAIRMAN. But you have to change your 46 percent to a lower figure if you are considering—

Mr. STRADELLA. If you are going to draft a new table, the figures are all going to be different; yes.

The CHAIRMAN. Entirely but, in any event, when you consider the purchase of installment paper from dealers by commercial banks, the figures will not be 46 percent; they will be much lower?

Mr. STRADELLA. I don't know what they will be. We will have to make that calculation first.

The CHAIRMAN. You would have to eliminate the 13 percent?

Mr. STRADELLA. I beg your pardon?

The CHAIRMAN. You would have to eliminate the 13 percent?

Mr. STRADELLA. Not if we are working on installment credit. We will, if we are working on the basis of contracts purchased from dealers.

The CHAIRMAN. Let us get this clear. I am not talking about what you put in here which covers the whole field.

Mr. STRADELLA. Of installment credit?

The CHAIRMAN. You have mixed chocolate, cheese, and oil and vinegar.

Mr. STRADELLA. We are talking about people who buy on installment.

The CHAIRMAN. I am talking about one phase, one classification, the purchase of installment paper from car dealers.

Mr. STRADELLA. I was not talking about that.

The CHAIRMAN. But I am.

Mr. STRADELLA. Yes, sir.

The CHAIRMAN. Now, as to that, the figures would have to be changed and rearranged, and the 46 percent would be materially reduced?

Mr. STRADELLA. Not to change my table.

The CHAIRMAN. Excuse me.

As far as I can see, the 46 percent would be materially reduced; 13 percent would be changed and the 18 percent of the GMAC would be greatly heightened.

Mr. STRADELLA. If you want to work on a limited area of the installment sale market, automobile installment sale market, you will get quite a different set of figures.

The CHAIRMAN. I only want the figures in the market in which you operate.

Mr. STRADELLA. We operate in the whole market.

The CHAIRMAN. GMAC does not purchase from—

Mr. STRADELLA. But we are trying to get business away from these other people.

The CHAIRMAN. You do not make loans directly to a car owner?

Mr. STRADELLA. It does not matter.

The CHAIRMAN. You make loans to the dealers?

Mr. STRADELLA. We are trying to get the dealers to go after it.

The CHAIRMAN. But your business is with the car dealers, not with the car owners?

Mr. STRADELLA. I think we have got a fundamental disagreement as to what the market is. We claim that the market is everybody who buys cars on credit.

The CHAIRMAN. I don't care what your claim is.

Mr. STRADELLA. You say it is not, so we have nothing but a fundamental disagreement here.

The CHAIRMAN. Answer this question, if you will.

Is it not true that GMAC' business is with the car dealer and not with the car purchaser?

Mr. STRADELLA. That is correct.

Mr. McCULLOCH. Mr. Chairman, before we finish that, at the risk of being repetitious, I again say I am interested in the entire credit structure of the automobile industry. I am very happy to know from this statement that 46 percent of the purchasers in this country, who purchase automobiles on credit, get that credit from commercial banks.

Now, any other statistics in this field that can be furnished will be very helpful.

The CHAIRMAN. Yes.

But I say to Mr. McCulloch that I do not mean to imply that the witness, by giving the figures, was misleading, but it misleads those who read this record.

We want to have additional figures which would indicate the percentage of paper purchased from the dealer, rather than from the car owners. That is what we want.

We want those, because GMAC deals with the dealers, not with the consumers. And so, in my opinion, these figures are very misleading.

Mr. McCulloch. Mr. Chairman, I think perhaps we had this same condition in reverse yesterday when we had the statement of Judge Loevinger, particularly the paragraph I read into the record. This helps clarify the question which was raised at that time.

I think we are both trying to get at the same facts. There was an approach by the Assistant Attorney General.

There is another approach here now. I think I now have the facts from both angles, or at least the facts are in the record.

The CHAIRMAN. I do not blame General Motors or General Motors Acceptance Corp. for placing before us the figures that would best suit them.

But I want the other figures, too.

Mr. CRABTREE. Mr. Chairman, may I ask a question?

Mr. MALETZ. Mr. Stradella, there are a great number of companies, are there not, that are engaged specifically in the business of competing with each other for the purchase of sales contracts from automobile dealers, isn't that right?

Mr. STRADELLA. Yes, sir.

Mr. MALETZ. Now credit unions and small loan companies are not engaged in the business of competing with sales finance companies, are they, for purchase of installment contracts?

Mr. STRADELLA. Not for the purchase of the installment paper but they are competing with sales finance companies.

Mr. MALETZ. That is your statement, sir.

Mr. STRADELLA. And you will find that that is the position of every other sales finance company, too. They don't like it any more than we do.

Mr. MALETZ. Now, we have done a very hurried recomputation, and on the basis of participation in the business of purchasing sales installment contracts from dealers, we find that these figures represent the apparent situation—that commercial banks have 41.9 percent of the business, other sales finance companies have 32.1 percent of the business, and GMAC has 35.7 percent of the business.

I beg your pardon—26.0 percent of the business.

Now, this is subject, Mr. Stradella, to your computations.

Pursuing this one step further, and if I may anticipate your statement, on page 9 you indicate that competitors of GMAC have financed over 80 percent of all installment credit purchases and over 55 percent of such purchases from General Motors dealers. These figures are also based, are they not, on totals which include extensions of credit by financial institutions directly to the retail purchaser?

Mr. STRADELLA. Yes, they are just the reciprocal of the other.

Mr. MALETZ. In other words, you have lumped the two together, have you not?

Mr. STRADELLA. Yes, it is just the reciprocal of the other figures.

Mr. MALETZ. Now, could you also make a recomputation showing what percentage—

Mr. STRADELLA. I see what you are going to say: yes, of course it can be done.

Mr. MALETZ. Would you do that, sir?

Mr. STRADELLA. Surely.

Mr. MALETZ. In other words, you will submit to the committee figures showing what percentage of the GM sales installment contract market GMAC actually has, both with respect to new car purchases and used car purchases.

Mr. STRADELLA. I am getting a little lost now.

I thought you just wanted the reciprocal, to provide for a revised table for my first table.

Do you want the reciprocal of that—

Mr. MALETZ. So there will be no question about this, could you supply the following table, covering only the business of purchasing sales installment contracts from General Motors dealers, one—

Mr. STRADELLA. Is that not what I do here on page 7?

Mr. MALETZ. If you would provide in addition the following table: One, a table which would cover only new cars. First the percentage of that market in 1957, 1958, 1959, and 1960 controlled by GMAC.

No. 2—

Mr. STRADELLA. I don't think we can get those figures from the other people. I think we have our own, but I don't think we can get any totals that way.

Mr. MALETZ. Will you then provide this information covering only the purchase of sales installment contracts from GM dealers?

First, the percentage of dollar volume of GMAC purchase of sales installment contracts covering new cars in the years 1956, 1957, 1958, 1959, 1960; and, second, the percentage of GMAC purchase of sales contracts in those same years of used cars.

Is that perfectly clear?

Mr. STRADELLA. It is not entirely clear, but let me answer you this way—

Mr. MALETZ. I want to make it perfectly clear.

Mr. STRADELLA. If you put it down and if we have the information we will furnish it. I mean if we have it and can calculate and compute it, we will be glad to furnish it. I am just not sure that we can do all those things, that the information is available, but if it is you may certainly have it and we will be glad to give it to you.

(The information referred to appears at pp. 859-862.)

Mr. CRABTREE. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CRABTREE. May I ask a question?

The CHAIRMAN. Yes.

Mr. CRABTREE. With regard to a definition of market, section 7 of the Clayton Act, as amended by the Celler-Kefauver Act, uses the phrase "wherein any line of commerce in any section of the country."

Perhaps Mr. Power, as an attorney, can answer this better than Mr. Stradella.

Do you know of any court interpretation of what the market is in the sales finance business, that is, whether it includes direct loans or whether it is limited to the purchase of commercial paper?

Mr. POWER. Offhand, I do not know of any at the moment. That is an interpretation of the market. But I will check it.

Mr. CRABTREE. If you were confronted with a section 7 case, as amended by the Celler-Kefauver Act, how do you think the court would define the market?



Mr. POWER. I don't know, but my position would be that it is the whole installment credit market that Mr. Stradella has been talking about. That would be my position.

Mr. CRABTREE. And, briefly, what are your reasons for making this statement.

Mr. POWER. Just because I think that is the market; just as Mr. Stradella does. Now, I would say I would expect Mr. Stradella would be the expert on it.

Mr. STRADELLA. I would like to say this: That when we look and try to develop our business in GMAC—and I am sure it is true of other sales finance companies—we are trying to get that business that is now going to the banks and the small loan companies possibly swung over to the other basis so that we can handle it.

I mean we look at it as the total market in which there is business available for all of us.

Mr. MEADER. Mr. Stradella, is this not what the case is? The function or the purpose is the furnishing of credit?

Mr. STRADELLA. That is right.

Mr. MEADER. For the purchase of an automobile?

Mr. STRADELLA. Exactly.

Mr. MEADER. There are different methods of doing it?

Mr. STRADELLA. Right.

Mr. MEADER. But just because a method is used, now, this way by one company does not necessarily mean that that makes that a market?

Mr. STRADELLA. You make the point I am trying to make much better than I do.

Mr. MALETZ. In other words, you will provide new tables covering only—

Mr. STRADELLA. Could we get those from you? Could we get it from the transcript?

Mr. MALETZ. You can get it from the transcript, and if there is any question, I am sure that your counsel can confer with us.

Mr. MEADER. Mr. Chairman, may I say that I have definitely a recollection, but I have not been able to find it so far in the record, that one of the witnesses—and I believe it was one of the witnesses representing the finance companies—said that on some occasions small loan companies purchased paper rather than making direct loans.

So to the extent that is true if it is, it would not be an accurate reflection of this narrower market that you are talking about unless those figures were also available.

I mean I should not think it would be quite fair to the witness to have him take an assumption that may not be true.

Mr. MALETZ. Mr. Chairman?

Mr. Stradella, may I repeat this question:

Do you know of any instance where a small loan company has purchased an installment contract from a dealer?

Mr. STRADELLA. I have to answer that by saying I know very little about small loan companies.

Mr. MALETZ. Has any instance ever come to your attention—

Mr. STRADELLA. No.

Mr. MALETZ. Where a small loan company purchased an installment contract from a dealer?

Mr. STRADELLA. No, it has not come to my attention.

Mr. MALETZ. How long have you been associated, sir, with GMAC?

Mr. STRADELLA. Forty-two years.

Mr. MALETZ. And in those 42 years there never has come to your attention an instance where a small loan company purchased a sales installment contract from a dealer; is that right?

Mr. STRADELLA. That is correct.

I am probably a very poor witness on this point, I mean, but that is correct as you put the question.

Mr. MEADER. That only proves that he does not know. It does not prove that they do not do it.

Mr. STRADELLA. No, it does not.

Mr. MEADER. I think Mr. Cassat or Mr. Jones can answer that.

The CHAIRMAN. Mr. Cassat, will you step forward?

Maybe you can give us the answer to that question. Will you answer that question?

Mr. MALETZ. May I ask you this question, Mr. Cassat: Do small loan companies purchase sales installment contract from dealers?

Mr. CASSAT. Some of them purchase contracts on small household equipment.

Mr. MALETZ. We are talking about automobiles.

Mr. CASSAT. But in automobiles, I don't know.

Mr. MALETZ. How long have you been in the business?

Mr. CASSAT. I beg your pardon.

Mr. MALETZ. How long have you been in the sales finance business?

Mr. CASSAT. Thirty-seven years.

Mr. MALETZ. Have you ever heard of an instance where a small loan company purchased a sales installment contract from a dealer?

Mr. CASSAT. I am like you here, I don't know that my testimony would be conclusive.

Mr. MALETZ. Has any such instance come to your attention?

Mr. CASSAT. As to whether it is being done or not?

Mr. MALETZ. Has any such instance come to your attention?

Mr. CASSAT. I don't think I know of a single case personally, to my own knowledge.

Mr. MALETZ. Is Mr. Jones here?

Mr. Jones, how long have you been in the sales finance business?

Mr. JONES. I have been in the sales finance business for 39 years.

Mr. MALETZ. Do small loan companies purchase sales installment contracts from automobile dealers?

Mr. JONES. Small loan companies are licensed by States to make only loans, direct loans to the people.

Mr. MALETZ. Have you ever heard of an instance in the time that you have been in the sales finance business of a small loan company purchasing a sales installment contract from a dealer?

Mr. JONES. No, sir, I have not.

The CHAIRMAN. This would be a good point at which to take a recess until 2:30.

(Whereupon, at 12:55 p.m., the hearing was adjourned, to reconvene at 2:30 p.m., of the same day.)

## AFTERNOON SESSION

The CHAIRMAN. Mr. Stradella, I understand that it is agreeable with your counsel that we consider the balance of your statement as read and that it be placed in the record and that you will subject yourself to questions.

**STATEMENT OF CHARLES G. STRADELLA, ACCOMPANIED BY A. F.  
POWER—Resumed**

Mr. STRADELLA. That is correct, sir.

The CHAIRMAN. Your entire statement will be placed in the record at this point.

(Mr. Stradella's statement is as follows:)

STATEMENT

BY

CHARLES G. STRADELLA

CHAIRMAN, GENERAL MOTORS ACCEPTANCE CORPORATION

BEFORE THE

ANTITRUST SUBCOMMITTEE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 71

JUNE 9, 1961

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INTRODUCTION

Mr. Chairman and gentlemen, my name is Charles G. Stradella. I am chairman of the board and chief executive officer of General Motors Acceptance Corporation, a wholly-owned subsidiary of General Motors Corporation, organized in 1919 under the Banking Laws of the State of New York.

Motors Insurance Corporation is a wholly-owned subsidiary of General Motors Acceptance Corporation. This subsidiary was organized in 1939 under the Insurance laws of the State of New York and over a period of time took over the physical damage insurance business of a former General Motors Corporation subsidiary -- General Exchange Insurance Corporation, organized in 1925. The latter was merged with Motors Insurance Corporation in 1960 with Motors Insurance Corporation becoming the surviving company.

With me is Mr. A. F. Power, General Counsel of GMAC and MIC.

SECTION I

PURPOSE OF STATEMENT

The purpose of this statement is to describe accurately for the Committee the business activities of GMAC and MIC; the relationships of GMAC, its subsidiary MIC, and General Motors Corporation; what the relationships encompass and what they do not; and to clear up a number of incorrect and misleading statements concerning these activities and relationships. These statements have been made in connection with the bill under consideration, H.R. 71, and with similar bills such as S. 838 and S. 839 introduced in the previous Congress. They have appeared in material published by supporters of this and similar bills as well as in testimony before the Senate Subcommittee on Antitrust and Monopoly in 1959 at the time of its hearings on S. 838 and S. 839.

It would appear that inaccurate information has also been furnished to some members of your Committee. The major source of such material would seem to be the American Finance Conference and its spokesmen.

In order to set the factual situation in accurate perspective, we are submitting the following statement.

SECTION II

This section describes the business of GMAC and MIC and the participation of GMAC in the automobile finance business. The latter has been the subject of considerable misinterpretation.

THE BUSINESS OF GMAC AND MIC

GMAC facilitates the movement of General Motors products to General Motors dealers and their customers by offering (1) to finance the distribution of new products to such General Motors dealers for resale (wholesale financing) and (2) to finance General Motors dealers' instalment sales of new and used products to retail customers (retail financing).

GMAC conducts its operations through more than 10,000 employees operating 320 branches, of which 276 are in the United States and 44 are in 10 other countries. Its facilities in the United States are nationwide.

It competes with commercial banks, sales finance companies, credit unions and any others engaged in similar activities.

As a direct adjunct of its financing service, GMAC makes available group creditor life insurance and group creditor disability insurance, both of which GMAC is willing to finance. These two kinds of insurance are provided by the Prudential Insurance Company and are offered by GMAC at the same premium costs paid by GMAC to Prudential. These coverages are optional and not a requirement of the GMAC time sales contract.

As is customary, however, physical damage insurance on the vehicle is a requirement in the GMAC time sales contract. The purchaser who finances with GMAC may select any insurance company he wishes. If he so desires, the insurance may be placed with MIC, the physical damage insurance subsidiary of GMAC. Regardless of the insurance company selected, the purchaser may also, if he wishes, have the insurance premium financed in the GMAC time sales contract.

MIC has 2,900 employees operating 142 branches in the United States and 14 in Canada. It competes with other insurance companies which offer physical damage insurance, including the physical damage insurance subsidiaries of a number of sales finance companies. In 46 states and in parts of Canada where it has agents, such agents seek business on cash sales as well as time sales and solicit renewal business on both.

Concerning its relationship with General Motors Corporation, GMAC made the following statement to the Senate Subcommittee on Antitrust and Monopoly in December 1955 (A Study of the Antitrust Laws, page 4022):

"We would like to make it entirely clear that GMAC stands on its own feet in all areas of operation. It is not subsidized or supported in any way by General Motors Corporation other than by capital funds and through sound advice from its three board members who are executives of General Motors Corporation. It is not pressured in any way on its policies or practices by anyone who is a director or employee of General Motors Corporation.

"In its association with General Motors Corporation, GMAC may have advantages. In all probability, there are dealers who are influenced by the assurance of continuity of service, community of interest, fair treatment, etcetera, which go with the association. Lenders are influenced by the assurance of adequate capitalization, sound management and conservative



financial policies and practices. On the other hand, unless these advantages were supported by the record of GMAC and its aggressive pursuance of sound practices, the association would do it little good in the eyes of the parties concerned."

This statement is still appropriate and correct.

Being unable to prove that GMAC is directly subsidized by General Motors Corporation in any way, the principal supporters of the legislation have resorted to an allegation that there is an indirect subsidy called by them "capital subsidy" (see American Finance Conference document entitled "A 'White Paper' on Automobile Financing").

It is alleged therein that General Motors Corporation undercapitalizes GMAC; that it can do so without interfering with the GMAC borrowing capacity by implying to lenders that both General Motors Corporation and GMAC are behind the GMAC obligations; that, if General Motors Corporation did not do this, GMAC would have to earn more money on greater capital and would, therefore, have to charge more for its services. Therefore, they say that a form of subsidy exists.

The facts are:

- (1) General Motors Corporation does not guarantee or stand behind GMAC obligations and does not imply that it does.
- (2) GMAC is not undercapitalized. Its capital requirements are determined by its Board after consultation with various lenders, underwriters, etc., and are maintained at whatever level is considered adequate to protect the investors in its securities.

In the light of this, no basis for a "capital subsidy" allegation exists.

POSITION OF GMAC IN THE AUTOMOBILE FINANCING BUSINESS

With respect to the GMAC participation in retail instalment financing, there have been assertions by those who favor this legislation which must, in all fairness, be corrected. They cite GMAC participation in this business out of all proportion to the actual fact.

According to Federal Reserve Board figures, approximately \$18 billion of automobile instalment credit was extended in 1960 by all sources of such credit, distributed as follows:

Commercial Banks	46%
Other Sales Finance Companies	23%
GMAC	18%
Credit Unions, Small Loan Companies, etc.	13%
<hr/>	
TOTAL	100%

These are facts on record upon which there can be no disagreement.

The percentage of automobile instalment credit extended by GMAC, currently 18%, has remained fairly steady for some years. Immediately prewar it was about 19%, compared with a peak of 31% in the early thirties.

The principal proponent of the proposed legislation, as with similar proposals in earlier years, is the American Finance Conference, which represents only a portion of the companies obtaining the 23% of total business done by the entire "Other Sales Finance Companies" group. This association attempts to make people believe that the GMAC participation or share in the financing business is not only much larger

than 18% but also that it has increased to new heights in recent years. This impression is created by using, as a base, only the volume of business done by the sales finance companies. This disregards approximately 60% of the retail automobile credit currently extended. The fact is that the Commercial Banks with 46% of the total are heavily engaged in the business along with Credit Unions, Small Loan Companies, Dealers, etc. with 13%. That both groups have increased their participation materially in recent years at the expense of sales finance companies other than GMAC has been deliberately ignored.

By relating the fairly level GMAC participation solely to the declining participation of sales finance companies, including GMAC, "a rising percentage" for GMAC in this limited area is automatically developed despite the fact that GMAC has not materially improved its relative position in the total market since 1954. To repeat, the GMAC participation in total automobile credit extended currently approximates 18% and it has been in this area for some years.

It is well known that GMAC confines its activities to General Motors dealers. A further meaningful figure, therefore, is the position of GMAC in the limited area in which it operates. What percentage of the retail credit sales of General Motors dealers is handled by GMAC? In 1960 (and the figure approximates that of recent years) GMAC financed about 27% of the total new and used car sales (cash and credit) of General Motors dealers. Using the well-accepted assumption that approximately 2 out of every 3 cars are sold on credit, this means that GMAC probably financed about 42% of the credit sales of General Motors dealers.

Summarizing, the position of GMAC may be clearly and accurately stated as follows:

GMAC, though in business more than 40 years, currently

- a) finances approximately 18% of the total automobile instalment credit purchases from all automobile dealers,
- b) finances approximately 42% of the automobile instalment credit purchases from General Motors dealers.

Or let's turn it around the other way. The competitors of GMAC finance over 80% of all automobile instalment credit purchases and over 55% of such purchases from General Motors dealers.

SECTION III

This section deals with the principal allegations of supporters of H.R. 71, which relate to the contention that GMAC enjoys special privileges and unfair advantages, due primarily to its association with General Motors Corporation.

THE ALLEGATION OF COERCION

It is said that General Motors dealers are forced to do business with GMAC.

GMAC knows of no dealers doing business with it as a result of coercion by anyone.

As far as GMAC itself is concerned, a General Motors dealer is free to do his financing business, wholesale or retail or both, with whom ever he chooses and to the extent that he desires.

The dealers' freedom to choose any financing source was emphasized in a statement filed by the National Automobile Dealers Association during the hearings before the Senate Subcommittee on Antitrust and Monopoly in 1959 (Hearings on S. 838 and S. 839, page 472):

"...if the dealer can obtain a better rate from an independent finance company or a bank, he can take it, but if he finds no better rate he can always take the very reasonable GMAC rate."

and also

"The GM dealer can give his wholesale business to GMAC and then shop around for the lowest available retail rates from banks and independent finance companies."

GMAC wholesale financing facilities are available to all General Motors dealers who qualify from a credit standpoint whether large or small, urban or rural. Dealers can use GMAC wholesale facilities and, at the same time

give all or part of their retail financing to banks or other finance companies. Many dealers do exactly this. Witness that GMAC provides wholesale financing for about 75% of the total GM shipments to dealers, while GMAC finances only about 27% of total shipments as retail instalment sales, although some 60-65% of new cars sold are bought on credit. Often a non-affiliated sales finance company will provide wholesale financing only if given a firm commitment from the dealer as to retail financing.

Conversely, the General Motors dealers may finance wholesale elsewhere and use GMAC for retail financing. Finally, they may do no business at all with GMAC.

Realizing that no coercion of General Motors dealers takes place, some state that GM dealers are subject to a special form of "persuasion" (sometimes called indirect coercion) by virtue of "the glitter of the five separate profit pockets which GMAC affords its dealers." Let us examine this.

The "pockets" implied to be some special prerogative of GMAC are:

- (a) retail mark-up in the price of the car
- (b) dealer reserve for repossession loss
- (c) commissions on car insurance
- (d) repair and parts business when an insured car suffers damage
- (e) loading or packing of finance charges

Mr. Paul C. Jones, chairman of the executive committee of the American Finance Conference, made a similar allegation in his testimony in 1959 (Hearings on S. 838 and S. 839, page 303). He appears to have been the originator of the term "profit pockets."

First, it is inaccurate to state that all of the "profit pockets" are afforded by GMAC. The actual retail mark-up "profit pocket" is, of course, a determination of the dealer. Second, it is inaccurate to imply that the other four "profit pockets" are provided solely by GMAC-MIC. Nor should it be considered that there is anything sinister or abnormal about them. These other pockets, attributable to GMAC or its insurance subsidiary, MIC, are equally available to General Motors dealers from many other sources, including non-affiliated sales finance companies and banks. They are also available to dealers of other automobile manufacturers.

Let's take the dealer participation in the finance charge whether by way of "reserve" or so-called "loading." Every dealer, as an independent merchant, has the absolute right to establish his finance charge with the customer at any mutually agreed level within local legislative restrictions. Having completed the contract with the purchaser, the dealer then has the choice of a number of financing sources to which he may sell the contract. He is aware of the cost charged by each source and he can choose the source he considers most desirable and advantageous to him. The dealer is entitled to and receives the difference, if any, between his charge to the purchaser and the discount retained by his financing source. Or, if the dealer elects to finance the contract himself, he retains the entire finance charge.

In the case of GMAC and many other financing services, a portion or all of the difference or dealer participation in the finance charge is retained for protection against losses. This is sometimes referred to as the "dealer reserve." This retention is paid to the dealer at regular intervals and becomes income to him only if it develops to be in excess of losses and expenses he has incurred. If there is any of the finance charge left after deduction of the finance company discount and provision of

"reserve," that is paid immediately to the dealer. This part of the difference is sometimes called "loading." These sources of income are inherent in all dealer-generated financing transactions.

The situation with respect to insurance commissions is basically the same. Any dealer who is an agent for an insurance company and licensed as such by the state may earn a commission on car insurance that he sells. The dealer-agent receives a fixed percentage of the premium as a commission in accordance with insurance practice. This practice applies equally to all dealer-agents, GM and non-GM, and whether representing MIC or some other company.

With respect to repairs, most purchasers, as a matter of course, return their cars to the original dealer for the required work. In case MIC is asked, it recommends the return of the damaged car to a dealer-agent, assuming, of course, that his charges are reasonable. It always respects the purchasers' wishes if they elect to take their cars elsewhere. This is customary sales finance company-insurance subsidiary practice.

It should be clear, therefore, that there is no special "persuasion" in the form of "profit pockets" solely provided by General Motors Corporation or GMAC or MIC for General Motors dealers. They are available to General Motors dealers and dealers of all makes from many sources.

#### ACQUISITION COSTS

It is alleged that GMAC need not spend as much money to acquire business as its competitors. This is attributed to its association with General Motors Corporation. GMAC has stated publicly on more than one occasion that about 30% of its operating expense is accounted for by acquisition costs. Further, GMAC has expressed its willingness to submit



its figures for comparison with competitors. No specific evidence has been offered by competition as to its acquisition costs although Mr. David B. Cassat, president of Interstate Finance Corporation, in 1959 did testify before Senator Kefauver's Subcommittee (Hearings on S. 838 and S. 839, page 62) that the acquisition costs of his company were about at this 30% level. The probability is that the acquisition costs of the non-affiliated companies may often be lower than those of GMAC, particularly where they make little or no attempt to compete with commercial banks or with GMAC for GM dealer business. In any event, competitors have failed to reveal any basis for the allegation.

Charges that the acquisition costs of GMAC are lower than competitors are often linked to the contentions that (1) the business of GM dealers is almost automatically directed to GMAC, (2) GMAC has a special entree to new GM dealers and (3) GMAC has lower credit investigation costs because it requires dealers to share in the function of evaluating credit.

First, in order to compete for the dealers' business (primarily with the commercial banks), GMAC must maintain a sales force devoting continuous effort to the acquisition of new business. No business is automatically directed to GMAC.

Second, GMAC does not have a special entree to new dealers. This point was covered in a statement made by GMAC in 1955 before the Senate Subcommittee on Antitrust and Monopoly (A Study of the Antitrust Laws, page 4023) as follows:

"GMAC has no entree not available to others. The consent decree specifies that General Motors Corporation cannot give GMAC notice of new appointments without making the same information available to others at their request.

Actually, this information is not given to anyone by the car divisions so that there will be no questions raised as to possible violation of the decree. GMAC gets its information by its own efforts and contacts in the local area."

Third, dealers using GMAC do generally share in the function of evaluating credit as alleged. GMAC believes that the dealer's judgment is very important because he is the only one who has any contact with the customer at the time the instalment sale is consummated. Nevertheless, GMAC must and does assure itself through investigation that a sound credit base lies behind the transaction.

#### PROFITABILITY OF WHOLESALE FINANCING

Statements have been made to the effect that the GMAC wholesale rates, again due to association with General Motors Corporation, are (1) unrealistically low and are (2) as a matter of policy, always maintained at a fixed percentage below those charged by its competitors. Neither statement is true.

GMAC rates for financing dealer stocks reflect the prevailing cost of short-term money to GMAC. Since wholesale financing is short-term financing, this is the proper yardstick. Short-term borrowing, in the case of GMAC and other larger finance companies, consists primarily of the sale of commercial paper, with the balance in the form of bank loans. Commercial paper generally carries a rate substantially lower than the rate charged by commercial banks. Use of the bank rate only or of long-term interest costs only or of a "mix" of long and short-term costs is unfair pricing. Examined on the basis of a fair "mix" of commercial paper and bank loans, GMAC finds wholesale financing at its rates a good and profitable business. Most larger finance companies have similar money costs in the same area.

In addition to the wholesale interest rate, the general practice in the industry is to charge an additional fee on each wholesale transaction financed. For example, GMAC collects a \$2 flat charge per car. CIT and CCC each charge  $1/8$  of  $1\%$  of the invoice price of the car. Other companies have varying charges. Such charges should not be disregarded in determining the profitability of the wholesale financing business. GMAC denies that its wholesale charges are unrealistically low.

The comparative levels of wholesale rates among the principal financing institutions at various times were discussed at length in the 1959 hearings on S. 838 and S. 839 before the Senate Subcommittee on Antitrust and Monopoly.

The exhibit on the following page compares the wholesale interest rates charged by GMAC, CIT (Commercial Investment Trust) and CCC (Commercial Credit Company) from 1952 to date.

U.S. NEW AUTOMOTIVE  
WHOLESALE INTEREST RATES  
OF GMAC, CIT AND CCC

<u>Effective Date of Rate Change</u>	<u>GMAC %</u>	<u>CIT %</u>	<u>CCC %</u>
<u>1952</u> - January 1#	4	4	4
- January 25		5	5*
<u>1953</u> - March 9	4-1/2		
- May 18	5		
<u>1954</u> - March 29	4		
- April 14		4	4*
- November 1	3-1/2		
<u>1955</u> - September 1	4	4-1/2	4-1/2*
- December 21			5
<u>1956</u> - January 2		5	
- February 1	4-1/2		
- September 15		6	6*
- September 17	5		
<u>1957</u> - October 1	5-1/2		
<u>1958</u> - January 1	5		
- January 27		5-1/2	5-1/2*
- February 1	4-1/2		
- March 10		5	5*
- April 21		4-1/2	4-1/2*
- May 1	4		
<u>1959</u> - February 2	4-1/2		
- May 14			5
- June 1		5	
- July 1	5		
- September 1		5-1/2	5-1/2
- September 14	5-1/2		
<u>1960</u> - September 1	5		
- September 16		5	
- September 21			5
<u>1961</u> - No change to date			

# Rates in effect as of January 1, 1952.

\* Month of rate change, but not exact date is known.

Day of month assumed to be the same as CIT.

NOTE: Data for CIT and CCC are accurate to the best of our knowledge.

This table shows, first, that there has been no uniformity or pattern in the timing of changes in wholesale interest rates and, second, that the variance between GMAC and other companies has not remained the same. On the contrary, the variance has fluctuated substantially. At times there has been no difference in rates (as is currently the case) and at other times in the last ten years such variance has been as much as 1½.

#### BORROWING CAPACITY AND LEVERAGE

The proponents of this and earlier bills make much of the fact that GMAC can borrow more money on the same capital and surplus than can non-affiliated sales finance companies. They argue that this is due to the ownership by General Motors Corporation and endeavor to substantiate their case by referring to a subordinated debt agreement which, at one time, did contain the provision that GMAC could borrow more by way of subordinated debt, as long as owned by General Motors Corporation, than otherwise.

First, it should be understood that the subordinated debt agreement referred to, as well as other similar agreements, has been modified. Regardless of General Motors Corporation ownership or non-ownership, there is one maximum and one only. Accordingly, any GMAC advantage in the subordinated debt area today is not due to ownership by General Motors Corporation.

Second, while it is a fact that GMAC may borrow somewhat more by way of subordinated debt than its principal non-affiliated competitors, the advantage is greatly exaggerated. GMAC may borrow up to \$1.50 for each \$1.00 of equity capital -- 67¢ by way of junior subordinated debt and 83¢ by way of senior subordinated debt. In the case of CIT, CCC and Associates, as demonstrated by their loan agreements, their capacity is \$1.25 of subordinated debt for each \$1.00 of equity capital -- 50¢ by way of

junior subordinated and 75¢ by way of senior subordinated debt.

It may be readily calculated that this advantage is one of 25¢ per \$1.00 of equity capital which is by no means "double that of most independents" as has been incorrectly asserted. It is an advantage which the sophisticated lenders in this area of financing consider warranted by the record of GMAC alone over the period of years. This may be confirmed with them.

It is, of course, true that the capacity to borrow more by way of subordinated debt in relation to equity capital creates a capacity to borrow more by way of senior debt since it increases so-called capital funds. Assuming that the others had the same capital and surplus as GMAC, the total advantage to GMAC is estimated to be in the area of 12½.

The same people leave the impression that GMAC maintains an excessive ratio of total borrowings to equity capital (capital and surplus) often referred to as "leverage." Let's examine this.

The bulk of the funds borrowed by sales finance companies are generally referred to as senior debt, ranking ahead of subordinated debt and, naturally, equity capital. The latter two, generally referred to as capital funds (see American Banker May 31, 1961), are a combined buffer and protective cushion for senior debt holders.

Now let us examine the relationship of senior debt to capital funds (capital, surplus and subordinated debt) at December 31, 1960 for the four largest sales finance companies.

	(1)	(2)	(3)	(4)	(5)
	Senior Debt		Capital Funds		Ratio Senior Debt to Capital Funds (Col. 1 divided by Col. 3)
At 12/31/60	Amount (Millions) \$	% of Total Liabilities %	Amount (Millions) \$	% of Total Liabilities %	
GMAC	4,320	82.8	895	17.2	4.8
CIT	1,753	76.1	552	23.9	3.2
CCC	1,620	78.0	456	22.0	3.6
AIC (Associates)	835	75.1	278	24.9	3.0

The foregoing makes it clear that each \$4.80 of borrowing by GMAC by way of senior debt is protected by \$1.00 of capital funds -- a conservative ratio by any standard.

Referring now to the capital funds we find the following distribution among these same companies:

	Capital Funds as % of Total Liabilities			
At 12/31/60	Total	Subordinated (or Capital) Notes	Preferred Stock	Common Stock & Surplus
	\$	\$	\$	\$
GMAC	17.2	9.6	1.0	6.6
CIT	23.9	9.7	-	14.2
CCC	22.0	9.6	-	12.4
AIC	24.9	11.1	1.2	12.6

The table shows that subordinated debt accounts for about the same percentage of liabilities in every case, about 10%. These amounts are usually provided by insurance companies, pension trusts, etc. These sophisticated lenders do not object to GMAC having a somewhat lower ratio of capital and surplus to their subordinated debt stake than is the case with other companies. This advantage is one which, we assert, is warranted by the GMAC record.

Those who complain about the GMAC borrowing capacity completely ignore a disadvantage which is due entirely to its ownership by General Motors Corporation. At the present time GMAC would qualify for approximately \$300 million of credit from the banks if it were not a subsidiary of General Motors Corporation. The disadvantage arises from the fact that loans extended by national banks and certain state banks to a corporation and its subsidiaries as a group are limited, by law, to a maximum of 10% of the combined capital and surplus of the bank. In view of this, the line of credit is, for practical reasons, offered by a given bank in total to the parent, General Motors Corporation. This is standard banking practice. General Motors Corporation, in turn, allocates the total among itself and its subsidiaries. After allocation and notification to the bank, each subsidiary completes its own arrangements with the bank on its own assurances. General Motors Corporation does not guarantee the GMAC obligations.

For many years GMAC has participated in these combined lines of credit to the extent of only 50%. Non-affiliated finance companies would have full 100% availability.



Bank credit lines are important not only in themselves but as a backstop for additional borrowings in commercial paper. Every sales finance company which sells commercial paper must keep a percentage of its bank lines unused as protection against the possibility of the short-term commercial paper buyer being unwilling or unable to renew his loan. Accordingly, the larger the bank credit lines the larger the potential volume of commercial paper that can be sold by a sales finance company. This loss of capacity to GMAC in the commercial paper market is substantial.

#### BORROWING COSTS

It has been charged that GMAC can borrow money at interest rates lower than can non-affiliated finance companies. Again it is said that this is due to its association with General Motors Corporation. These statements are not true. Let's compare the GMAC borrowing costs with those of other companies of size. The following table compares the actual average annual interest costs of GMAC and its principal competitors in the sales finance industry:

<u>Year</u>	<u>Average Interest Costs Per Annum</u>			
	<u>GMAC</u> %	<u>CIT</u> %	<u>CCC</u> %	<u>AIC</u> %
1950	2.17	2.13	2.13	2.29
1951	2.32	2.54	2.64	2.65
1952	2.58	2.57	2.65	2.82
1953	3.31	3.00	3.27	3.17
1954	3.28	2.81	2.89	2.89
1955	3.22	2.74	2.90	3.05
1956	3.60	3.44	3.43	3.67
1957	3.85	3.89	4.05	4.12
1958	3.70	3.34	3.59	3.59
1959	4.26	4.01	4.29	4.15
1960	4.48	4.39	4.60	4.64

Note: Based on average of borrowings outstanding at beginning and end of year.

This table shows the similarity between the interest costs of GMAC and those of its competitors who borrow substantially in both the long-term and short-term money markets.

The fact that GMAC average interest costs are the same or slightly higher than those of its competitors is due to GMAC having a somewhat higher percentage of the more expensive long-term borrowings.

Significant, too, is the fact that when GMAC and one of the other larger companies have marketed senior debt at about the same time, the cost of such borrowings has been practically identical. Further, the yields quoted from day to day on the public debt of these companies in the New York market are substantially the same for similar maturities.

In 1959, Mr. L. Walter Lundell, chairman of the financing subsidiary of CIT, said "we will concede, and I am now talking of CIT, that we pay borrowing rates as low as GMAC." (Hearings on S. 838 and S. 839, page 342).

#### PROFITS

It has been alleged that GMAC enjoys higher net profits than the average for the industry. This is only indirectly attributed by others to ownership by General Motors Corporation.

There are, of course, different yardsticks for measuring relative profitability. Expressed in terms of percentage on capital and surplus employed, the GMAC rate of net profit no doubt has exceeded the industry's average. The higher return on capital and surplus is, however, largely the result of its choice as to the arrangement of its capital structure. Some corporations, as in the case of GMAC, may prefer to put a smaller amount in capital and surplus and use subordinated

indebtedness to provide the majority of the capital funds which protect senior debt. This naturally makes the same amount of net profit expressed as a rate of return on invested capital and surplus somewhat higher. Other corporations may object to borrowing a large percentage of their capital funds by way of subordinated debt. Those corporations may prefer to have a higher amount in capital and surplus, which carry no fixed charges, in order to channel income to themselves rather than to others. The same net profit expressed as a percentage return on invested capital is thus made smaller.

In order to get the proper perspective on the GMAC return on investment, the following table compares return on the investment of the GMAC stockholder (General Motors Corporation) with that of the stockholders of other major sales finance companies since 1954:

Net Income as % of Equity Capital

	<u>GMAC*</u>	<u>CIT</u>	<u>CCC</u>	<u>AIC</u>
1954	21.2	21.2	14.9	21.2
1955	17.8	17.6	14.3	22.5
1956	19.0	16.8	13.5	20.3
1957	17.6	16.2	12.9	18.7
1958	18.7	15.4	12.1	14.0
1959	14.9	14.7	11.9	13.0
1960	14.8	14.3	11.6	10.9

\*In the case of General Motors Acceptance Corporation, equity capital includes both common and preferred stock, all of which is owned by General Motors Corporation.

The following table compares the percentage of net income to average earning receivables for GMAC and other major sales finance companies from 1950 through 1960. This would seem to be a fair method of comparison. It brings out clearly the size of the final net profit element in relation to the amount that the customer is financing.

<u>Year</u>	<u>Percentage of Net Income After Taxes To Average Earning Receivables</u>			
	<u>GMAC</u> %	<u>CIT</u> %	<u>CCC</u> %	<u>AIC</u> %
1950	1.8	3.4	3.2	3.9
1951	1.8	2.7	2.8	3.3
1952	1.4	2.5	2.4	2.7
1953	1.4	2.5	2.6	2.6
1954	1.3	2.8	2.7	2.8
1955	1.1	2.2	2.5	2.8
1956	1.1	1.9	2.1	2.3
1957	1.1	1.9	1.9	2.3
1958	1.3	2.1	1.9	1.9
1959	1.1	2.3	1.8	1.8
1960	1.1	2.1	1.6	1.4

Note: Based on average of earning receivables outstanding at beginning and end of year.

This table shows that the net income of GMAC as a percent of average receivables has been lower than that of other major sales finance companies for every one of the last eleven years. This means, of course, that given the same amount of dollar earning receivables, the net income of GMAC in dollars would be considerably less than that of others. For example, in 1957 when GMAC had a net income after taxes of \$46 million it had average receivables of \$4,287 million. CIT, CCC and Associates combined had only slightly higher average receivables of \$4,357 million. Nevertheless, their combined net income for the year 1957 was \$87 million after taxes.

SUMMARY

The foregoing clearly establishes the following points:

1. GMAC participation in the automobile financing business is approximately 18% of the total market and about 42% of the limited market in which it operates.

2. Any loss in competitive position by other sales finance companies can be attributed to the improvement in the position of commercial banks and credit unions. The position of GMAC in relation to the total amount of automotive credit extended has remained quite stable.

3. GMAC does not coerce dealers to obtain either retail or wholesale financing. GMAC knows of no instances where General Motors Corporation or anyone else is doing so. It does not rely on General Motors Corporation for anything except capital funds. It stands on its own feet.

4. GMAC has no special "profit pockets" which it offers General Motors dealers which are not equally available to General Motors dealers or any other dealers from other financing sources.

5. GMAC acquisition costs are no lower than those of other sales finance companies. Certainly, there is no evidence to the contrary. GMAC has no special acquisition benefits as alleged through coercion, special entree, or low investigation costs.

6. GMAC wholesale financing is profitable and GMAC sets its rates, in accordance with short-term money and other costs, in order to produce a profit. It does not adjust its rates to those of other sales finance companies or maintain a fixed variance with such rates.

7. GMAC has no borrowing advantage due to its association with General Motors Corporation and has no unfair borrowing advantage of any kind. Such advantage as it has, it merits by virtue of its own standing with lenders. GMAC actually has some disadvantages, such as the reduction of its potential bank credit lines, due to its association with General Motors Corporation, which non-affiliated companies do not have.

8. GMAC borrowing costs are no lower than those of its principal competitors.

9. GMAC net profits expressed as a percentage earned on equity capital are somewhat but not materially higher than its principal competitors in the sales financing industry. This is due to its employment of a smaller capital and surplus in relation to total borrowings.

GMAC net profits expressed as a percentage of average earning receivables are substantially lower than those of the same competitors.

\* \* \*

It is hoped that the material presented will be helpful to the Committee in reaching its conclusion as to the merits and demerits of this bill and particularly that it may place the General Motors-GMAC relationship in its true light in so far as that relationship affects the operation of GMAC and MIC.

GMAC contends that its position with General Motors dealers is better than that of the non-affiliated finance companies entirely due to the fact that in most instances GMAC offers a better service at a lower cost than do many of these finance companies. This appears to be confirmed by the fact that many banks which offer comparable or perhaps less costly service are very successful in acquiring business from General Motors dealers.

It is impossible to refrain from drawing the conclusion from their statements that the non-affiliated companies somehow hope that, if divested by General Motors Corporation, GMAC will, somehow or other, charge more for its services and thus make it easy for its competitors to obtain more business.

On more than one occasion we have quoted an observation on automobile financing made by the late Fred Othman, in his Washington column. It seems appropriate to quote it again. He wrote, after listening to some of the testimony of critics of GMAC in Senate hearings in 1955: "I got the idea, without anybody saying it, that this biggest finance company was holding the line on interest charges and that if it weren't in business, the cost to those buying sedans on tick might be considerably higher."

Thank you very much.

The CHAIRMAN. Likewise, the statement of Mr. Donner will be placed in the record and he likewise will subject himself to questions. Is that agreeable?

Mr. POWER. That is correct.

Mr. Chairman, may I ask that we be permitted to file a supplemental statement? We had not had an opportunity to read the transcript yesterday, and just simply on any of the points that are there, we would like to file a statement.

(The supplemental statements appear at pp. 637 and 793.)

The CHAIRMAN. That will be perfectly agreeable.

Mr. POWER. Thank you.

The CHAIRMAN. However, if the committee wishes to interrogate you or somebody connected with your concern in connection with the supplemental statement, you will agree to that interrogation?

Mr. POWER. That is right. We will have someone available, yes. I cannot guarantee that Mr. Donner or Mr. Stradella would be available, but it would be somebody in authority and someone who would be informed.

The CHAIRMAN. Thank you. Mr. Maletz?

Mr. MALETZ. Mr. Stradella, when General Motors sells automobiles to dealers, it requires the payment of cash at the factory, does it not?

Mr. STRADELLA. Those are their terms, yes.

Mr. MALETZ. Is it correct that besides providing retail installment credit by the purchase of dealer installment paper, GMAC also finances the wholesale purchase of GM products by its dealers?

Mr. STRADELLA. Yes.

Mr. MALETZ. In other words, GMAC finances the so-called floor planning of the dealers; is that right?

Mr. STRADELLA. That is correct.

Mr. MALETZ. There was testimony before the Senate Antitrust Subcommittee that the independent finance companies have experienced considerable difficulty in obtaining approval from General Motors to permit them to provide wholesale financing to General Motors car dealers. It has been testified before that subcommittee that after a General Motors dealer has agreed to use an independent finance company for wholesale financing, necessary approval by General Motors of the finance company and its financial paper is sometimes long delayed and difficult to obtain.

What is your comment on that, sir?

Mr. STRADELLA. I do not think that that is in my area. I just would not know. You see, that all happens before we get into it.

Mr. POWER. That is, a General Motors witness would have to testify to that.

Mr. MALETZ. In other words, these questions should I take it, be more appropriately addressed to Mr. Donner?

Mr. STRADELLA. That would. I do not know about the others.

Mr. MALETZ. Is it not a fact that in 1925 GMAC initiated the practice of setting up a so-called dealer's reserve to take care of anticipated reposessions?

Mr. STRADELLA. Yes.

Mr. MALETZ. And is it correct that the amount of this reserve has always substantially exceeded the amount necessary to protect the dealer from their liability in case of repossession?



Mr. STRADELLA. Most of the time substantially. More recently in this past year it was getting fairly close to "even Stephen."

Mr. MALETZ. Is it correct that in 1952 GMAC paid its dealers \$5,901 out of reserves for each new car actually repossessed?

Mr. STRADELLA. If you are reading from the testimony I gave before Senator Monroney, yes, that is correct.

Mr. MALETZ. I wonder whether you could provide for the record the amount for each year since 1952 that GM paid its dealers out of reserves for each new car actually repossessed. In other words, could you bring your 1952 figure up to date?

Mr. STRADELLA. I think we can do that right now, if you would like it.

Mr. MALETZ. Yes.

Mr. STRADELLA. You have them there?

Mr. MALETZ. The figure was \$5,901 for 1952.

Mr. STRADELLA. Yes. You have \$5,901 and you would like to have them beginning with \$5,901?

Mr. MALETZ. If you would, sir.

Mr. STRADELLA. 1953, \$3,499.

Mr. MALETZ. To make this perfectly clear, you are now reading into the record the amount GMAC paid its dealers for each year since 1952 from reserves for each new car actually repossessed?

Mr. STRADELLA. It is the reserve which was set aside in that year divided by the number of repossessions during that year.

Do you follow the amendment that I made?

Mr. MALETZ. Yes.

Mr. STRADELLA. 1953, \$3,499; 1954, \$2,026; 1955, \$2,521; 1956, \$1,282; 1957, \$986; 1958, \$556; 1959, \$1,058; and 1960, \$864.

Mr. MALETZ. Directing your attention to 1952, in that year is it not correct that the amount the General Motors dealer obtained from GMAC from dealer reserves or from the dealer reserve fund far exceeded any credit losses which GMAC or the dealer sustained?

Mr. STRADELLA. Or in excess?

Mr. MALETZ. Yes, excess.

Mr. STRADELLA. Yes.

At least I would say it. I mean I don't know exactly what they took, but I don't think there is any question about that being so in that year.

Mr. MALETZ. And is the same situation true in 1960?

Mr. STRADELLA. You see, we do not know exactly what the dealers do take themselves. The only relation we could give you is the losses which we may take on cars which we ourselves may have to sell.

Mr. MALETZ. What was the figure, again, sir, for 1960?

Mr. STRADELLA. For which year?

Mr. MALETZ. 1960.

Mr. STRADELLA. \$864.

Mr. MALETZ. And you have no way of knowing what the dealer loss actually was?

Mr. STRADELLA. The dealer loss, no, I do not know. We do know, if we are in the same position of having to resell a car, what we might lose, yes.

Mr. MALETZ. I take it that these reserve payments to the dealers from the dealer reserve fund are made by GMAC to the dealer on a periodic basis?

Mr. STRADELLA. Yes. This is the normal way.

When the amount gets up to 3 percent of the retail receivables of the dealer, then we periodically pay back the excess, reducing it to the 3 percent.

Mr. MALETZ. In past years have these dealer reserve payments been actually an additional source of financing income for the dealer?

Mr. STRADELLA. Additional to what?

Mr. MALETZ. Have these dealer reserve payments been an extra source of profit for the dealer?

Mr. STRADELLA. Are you using profit or income?

Mr. MALETZ. Income.

Mr. STRADELLA. Income, because I don't know whether there is a profit or not. I mean as a form of income, obviously anything that we may pay the dealer would go into his income account.

Whether it ever gets down to profit, we, of course, do not know.

Mr. MALETZ. Let us take 1952.

Mr. STRADELLA. Yes.

Mr. MALETZ. There was payment of \$5,901 to dealers for each new car actually repossessed.

A substantial part of that amount represented profit to the dealer, did it not?

Mr. STRADELLA. Unless he has traded it away. You see, there are so many factors in the trading for the sale of the car that you do not know.

I mean if he trades this all away in his allowance, why, it isn't. Income, yes. Profit, finally——

Mr. MALETZ. Now you state that GMAC's acquisition costs are about 30 percent of your operating expense; is that correct?

Mr. STRADELLA. Yes.

Mr. MALETZ. Mr. Cassat, the president of the Interstate Finance Corp., Dubuque, Iowa, testified before the Senate Antitrust Subcommittee at page 399 that acquisition costs of his company are 30 percent of his company's entire income. Had your attention previously been directed to that phase of Mr. Cassat's testimony?

Mr. STRADELLA. Yes, indeed, and I want to call your attention to the other phase of Mr. Cassat's testimony, and if you look on page 62 of the same record——

Mr. MALETZ. Yes, I have. I was going to ask you about that, too.

Mr. STRADELLA. You will find that Mr. Cassat is wrong in one place or the other, because he did say it was 30 percent of his total cost.

Mr. MALETZ. At page 62 Mr. Cassat, as I recall, testified that his acquisition costs were 30 percent of his total costs.

Mr. STRADELLA. That is correct.

Mr. MALETZ. And at page 399 he testified his acquisition costs were 30 percent of his entire income?

Mr. STRADELLA. That is right. May I express an opinion as to which is right?

Mr. MALETZ. Is Mr. Cassat in the room?

Let us assume that Mr. Cassat's operating acquisition costs are 30 percent of his entire income.

On that hypothesis, would it not be correct that GMAC's acquisition costs are substantially below those of independent sales finance companies such as Mr. Cassat's?

Mr. STRADELLA. I will not make the assumption because if Mr. Cassat's acquisition costs were in that order, Mr. Cassat would be out of business, and you can take his balance sheet and profit and loss statement and prove that to anyone.

He just could not live. He would be broke because 30 percent of his gross income as an operating expense for acquisition alone would completely bankrupt him.

Mr. MALETZ. So, therefore, you conclude——

Mr. STRADELLA. I just don't want to take that assumption, that is all.

Mr. MALETZ. That the result is that Mr. Cassat's testimony at page 62 must represent the actual situation?

Mr. STRADELLA. I think it is much closer to the truth.

Mr. MALETZ. To the best of your information, is it approximately correct that in 1959-60 there were approximately 2,504 independent sales finance companies?

Mr. STRADELLA. I don't know.

Mr. MALETZ. That information, Mr. Chairman, is obtained from a document captioned "White Paper" prepared by the American Finance Conference. The information appears at page 65.

I take it you won't dispute the accuracy of that?

(The document entitled "A 'White Paper' on Automobile Financing" appears at p. 233.)

Mr. STRADELLA. I have no reason to challenge that at all.

Mr. MALETZ. This same document states that these 2,504 independent sales finance companies have a total of 20,602 non-General Motors new car dealers, and I take it again that you are not in a position to question the accuracy of that figure.

Mr. STRADELLA. No, I think that is probably correct.

Mr. MALETZ. You think it is probably correct?

Mr. STRADELLA. Pretty close.

Mr. MALETZ. And on this basis, there is a ratio, is there not, of 1 independent sales finance office to 8 dealers?

Mr. STRADELLA. If that is the way the mathematics work, yes.

Mr. MALETZ. Is it not a fact, however, that GMAC has 272 offices to serve 14,427 General Motors dealers?

Mr. STRADELLA. I think the figure was 276 in my testimony.

Mr. MALETZ. 276 offices to serve 14,427 General Motors dealers, is that right?

Mr. STRADELLA. If that 14,000 figure on General Motors is correct, which I imagine you have substantiated.

Mr. MALETZ. In other words, GMAC has 1 office to 53 dealers as contrasted with 1 office for 8 dealers so far as independent sales finance companies are concerned, isn't that right?

Doesn't this mean that General Motors has a very considerable advantage over its competitors in terms of operating costs?

Mr. STRADELLA. No.

Mr. MALETZ. Why not?

Mr. STRADELLA. Which competitor are you talking about?

Are you taking them all as a group?

Mr. MALETZ. I am talking about this as a complex.

Mr. STRADELLA. I have no idea what it costs them to operate all those offices nor any comparative basis.

Let's take what it costs them to operate their offices and what it costs us to operate our offices and we will be able to make some comparisons and conclusions.

I couldn't do it from what you read.

Mr. McCULLOCH. I wonder if the independent sales finance companies finance paper other than automobile paper. I think we ought to have that for the record.

I think that is very important in determining the amount of time that will be used in servicing a certain number of outlets for paper.

Will that information be placed in the record later on?

Mr. MALETZ. Yes.

Is it correct that GMAC has been able to obtain money by public borrowings on a basis of approximately \$95 of borrowed money to every \$5 of GMAC's equity?

Mr. STRADELLA. Would you state that again?

Mr. MALETZ. Yes, of course.

Is it correct that GMAC has been able to obtain money by public borrowings on a basis of approximately \$95 of borrowed money to every \$5 of GMAC's equity?

Mr. STRADELLA. I think just for the sake of clarity that word "public" we use in one way and I think you mean from any source at all, don't you?

Mr. MALETZ. Yes.

Mr. STRADELLA. Yes, there have been times when that has been the relationship between the capital of the company and all other borrowers of all kinds.

Mr. MALETZ. In other words, in the past GMAC has been able, has it not, to borrow at a ratio of approximately 19 to 1?

Mr. STRADELLA. Let's put it this way. Its borrowings have been at a ratio of 19 to 1. They aren't there now, but there was a point when they were, yes.

Mr. MALETZ. And is it not a fact that competing independent sales companies not affiliated with an automobile manufacturer had a borrowing ratio of only 6 to 1?

Mr. STRADELLA. I think they have been higher, but I am not sure.

Mr. MALETZ. This information is contained in the staff report of the Senate Antitrust Subcommittee.

Do you disagree with that statement?

Mr. STRADELLA. Your statement is, Have they had a ratio of that? Your question is, Have they had that ratio at certain times?

I can also say we have had that ratio at certain times, too.

Mr. MALETZ. This staff report was issued in 1956, and states in part as follows at page 72:

Since GMAC is able to obtain money by public borrowings on a basis of approximately \$95 of borrowed money to every \$5 of GMAC's equity because of its affiliation with General Motors while independent finance companies have to obtain funds with which to compete on a borrowing basis of approximately \$30 to every \$5 of invested capital, it is apparent that GMAC can operate on a lower money rate of return and still make the same yield on its equity capital as any of its competitors.

Forgetting about the conclusions, was it correct that as of 1956 GMAC was able to borrow at a ratio of approximately 19 to 1?

Mr. STRADELLA. I think that was true; yes.

Mr. MALETZ. What was the ratio at which GMAC was able to borrow in each year since 1956?

Mr. STRADELLA. Whether we did borrow or could borrow?

Mr. MALETZ. Could.

Mr. STRADELLA. The ratio that we could borrow?

Mr. MALETZ. Yes, was able to borrow.

Mr. STRADELLA. I don't know how you determine such a thing as able to borrow.

You mentioned 19 to 1.

I don't know, maybe we could borrow 30 to 1.

Mr. MALETZ. Could you give the committee the actual borrowing ratio for each year since 1956?

Mr. STRADELLA. I would be glad to. If we haven't we certainly can.

And I want to make a great distinction between what the people do and what they can do. I mean these other companies may not borrow as much as we, but it may be perfectly possible that they can do it a lot better than they actually do it.

Mr. MALETZ. Could you supply to the subcommittee the following information:

The figures for each year beginning in 1956 showing if such information is available, the——

Mr. STRADELLA. On GMAC, you mean?

Mr. MALETZ. GMC's potential borrowing ratio, and, secondly, its actual borrowing ratio.

Mr. STRADELLA. I can't answer potential borrowing ratio.

I don't know.

Mr. MALETZ. Then you will provide information with respect to the actual borrowings?

Mr. STRADELLA. Actual, yes, we can do that, GMAC, and that ratio is borrowings, what we call in the trade capital funds or borrowings, to what we call in the trade equity capital?

Mr. MALETZ. That is right.

Mr. STRADELLA. Which?

Mr. MALETZ. Could you supply that information for both?

Mr. STRADELLA. Yes.

(The information referred to appears at p. 587.)

Mr. MALETZ. Your statement before the Senate Antitrust Subcommittee indicated, did it not, that GMAC, by virtue of its affiliation with General Motors, had power to borrow 200 percent of its equity capital through issuance of subordinated notes while CIT, the largest of the independent sales finance companies, had the power to borrow only 125 percent of its equity capital in the form of subordinated indebtedness; is that true?

Mr. STRADELLA. That is my statement at that time; yes.

Mr. MALETZ. That was your statement as of when, as of 1959?

Mr. STRADELLA. The document you have there, yes, 1959. I gather you were reading——

Mr. MALETZ. As of 1959 it was correct, was it not, that under the borrowing arrangement which GMAC had with various lending institutions, GMAC could borrow more by way of subordinated debt so long as it was owned by General Motors than if it were not so affiliated?

Mr. STRADELLA. By way of subordinated debt; yes, that is correct

Mr. MALETZ. And for how long did such arrangements continue as between GMAC and lending institutions?

Mr. STRADELLA. They continued for all practical purposes until about February of 1960.

Mr. MALETZ. When were such arrangements initially entered into?

Mr. STRADELLA. The initial arrangement, the first time there was any such clause, was in 1953.

Mr. MALETZ. 1953?

Mr. STRADELLA. 1953.

Mr. MALETZ. Now, you indicate in your statement that this subordinated debt agreement has been modified?

Mr. STRADELLA. That is correct.

Mr. MALETZ. And I think that you just testified that it was modified in February of 1960?

Mr. STRADELLA. For all practical purposes that was when we changed agreements. We did not complete the technical modifications of all the documents until some time later, but, having taken the step with an issue we brought out at that time, it, in effect, had—

Mr. MALETZ. Could we have a copy of this modified subordinated debt agreement?

Mr. STRADELLA. Certainly.

Mr. MALETZ. Or could you supply it for the record?

Mr. STRADELLA. We will supply it for the record.

(The information referred to appears at pp. 587 and 635.)

Mr. MALETZ. Under this modified subordinated debt agreement, can GMAC still borrow up to 200 percent of its equity capital through issuing subordinated notes?

Mr. STRADELLA. It cannot; no.

Mr. MALETZ. What is the amount it can borrow?

Mr. STRADELLA. 150 percent.

Mr. MALETZ. 150 percent?

Mr. STRADELLA. That is actually, that is shortcutting it a little bit, but that is the net effect of it. There are two different types of issues, but putting them together that is the effect.

Mr. MALETZ. What was the reason for effecting this modification of the subordinated debt agreement?

Mr. STRADELLA. I would say that it was the testimony of Paul Jones back in 1959, which brought out the fact that it looked a little silly to say that we were trying to stand on our own feet when that particular clause was in there, so we decided to get rid of it. We, of course, never made use of it.

The CHAIRMAN. And you do feel that hearings sometimes before a congressional committee may be of great help to you?

Mr. STRADELLA. I do, sir.

Mr. MALETZ. Under this present subordinated debt agreement, you can borrow up to 150 percent of your equity capital?

Mr. STRADELLA. That is correct.

Mr. MALETZ. Is it not correct that your largest competitor, CIT, can borrow only up to 125 percent?

Mr. STRADELLA. That is correct.

Mr. MALETZ. Of its equity capital?

Mr. STRADELLA. That is correct.

By the way, I covered this at some length in my statement.

Mr. MALETZ. Yes.

I think you concede in your statement, do you not, that vis-a-vis, your sales finance competitors, GMAC has an advantage in its borrowings through the use of its subordinated debt?

Mr. STRADELLA. Yes; of approximately 12 percent, I think the figure is.

The CHAIRMAN. That is a consequential advantage; is it not?

Mr. STRADELLA. Yes; it is a good advantage, but it is one which we think we are entitled to compared to our competitors.

The CHAIRMAN. It is a bigger advantage than CIT or CCC has?

Mr. STRADELLA. Against each other, you mean?

The CHAIRMAN. And it is even a greater advantage that GMAC has over competitors that are not as large as CIT or CCC; is that correct?

Mr. STRADELLA. If you search it, you will find some that have better arrangements than even Commercial Credit and CIT. I don't think you can make a broad statement on it, Mr. Chairman.

Mr. MALETZ. Would you tell the subcommittee what the ratio in 1959 was as between GMAC's total debt and equity capital?

Mr. STRADELLA. Total debt and equity capital? For 1959?

Mr. MALETZ. 1959, and I was going to ask you the same question for 1960.

Mr. STRADELLA. 12.5.

Mr. MALETZ. 12.5 to 1?

Mr. STRADELLA. 12.5.

Mr. MALETZ. That is the ratio for 1959?

Mr. STRADELLA. For 1959, that is correct.

Mr. MALETZ. And what is the ratio for 1960?

Mr. STRADELLA. 1960?

Mr. MALETZ. Yes, sir.

Mr. STRADELLA. 12.2.

Mr. MALETZ. At the present time what is the total amount of GMAC bank lines of credit?

Mr. STRADELLA. In the United States, that is \$807 million as of December 31.

Mr. MALETZ. What is the combined total bank lines of credit of General Motors and GMAC from which General Motors allocates credit lines to GMAC?

Mr. STRADELLA. I don't want to speak for General Motors because they are the ones that do the allocating. I would deduce from what I have said in my testimony that if they are giving us 50 percent—and I have stated that there is \$300 million that we lost out on because they retain 50 percent—I would say that then the total lines with those particular banks, those National banks or State banks which have the restrictions, would be some \$600 million.

The CHAIRMAN. But that means that GMAC gets 50 percent of the total borrowings of General Motors for all of its operations of affiliates?

Mr. STRADELLA. No, no, it does not. It means that with certain banks, primarily national banks, their total line must be divided between the parent and all its subsidiaries, the usage of the credit must be divided among the subsidiaries, whereas with State banks and other banks, they can give their full limits both to General Motors and to GMAC.

But the total of permissible line in the national banks must be divided among the subsidiaries. General Motors arbitrarily keeps 50 percent for themselves, and we get the other 50 percent. Now, that restriction, of course, does not apply—

The CHAIRMAN. That is, national bank borrowing?

Mr. STRADELLA. Primarily national banks, yes.

The CHAIRMAN. What about money in the commercial market?

Mr. STRADELLA. In the market? That has no effect on that at all.

The CHAIRMAN. None whatever?

Mr. STRADELLA. No. This is purely on bank lines, and that means if we were independent of General Motors, we would, of course, get \$600 million, using those figures, as compared with \$300 million we get now.

Mr. MALETZ. I am a little curious as to why the 50 percent figure was selected. Cannot General Motors at any time raise this percentage figure to 59, 60, 65, 75 or even 100 percent if it so desires?

Mr. STRADELLA. I think you should direct that to General Motors.

Mr. MALETZ. What is your opinion on that?

Mr. STRADELLA. You mean could that happen, is it permissible?

The CHAIRMAN. Yes.

Mr. STRADELLA. It is permissible, yes.

Mr. MALETZ. General Motors would have that discretion, would it not?

Mr. STRADELLA. It would have discretion. It might not be the best thing.

Mr. MALETZ. To raise it to any figure they desire, is that correct?

Mr. STRADELLA. You mean to say, could they give us the whole line?

Mr. MALETZ. Certainly.

Mr. STRADELLA. I suppose they could if they felt that they could do without it.

The CHAIRMAN. They are not likely to, but they could.

Mr. STRADELLA. I do not think there is any restriction on them.

The CHAIRMAN. If they could, and I think they can, that means that the great credit facilities of General Motors can inure to the benefit of General Motors Acceptance Corp.?

Mr. STRADELLA. No, I do not think that follows. I mean if we were not part of General Motors, I am quite sure that we could get all of that money anyway. So that we are not using General Motors. As a matter of fact, the point is that we are restricted by our association with General Motors.

The CHAIRMAN. I take it General Motors is very prudent and does not want to give you, say, more than 50 percent. But the power is there and they could do that at their will.

Mr. STRADELLA. Yes.

The CHAIRMAN. And therefore, the power lies in that situation whereby there could be allocated to the General Motors Acceptance Corp. all the traffic that their credit can bear?

Mr. STRADELLA. But we would get that on our own.

The CHAIRMAN. Even 100 percent?

Mr. STRADELLA. We could get that money on our own were we not part of General Motors.

The CHAIRMAN. That is not the point. The point is that General Motors can stand beside you and help you to that very marked degree.



Mr. STRADELLA. No, they are not helping us. They are hurting us by keeping back 50 percent.

The CHAIRMAN. The time will come when they may want to help you when you may need the help and then they are there to do it.

On page 7 of your statement, the next to last sentence:

This means that GMAC probably finances about 42 percent of the credit sales of General Motors dealers.

About how many cars does that represent?

Mr. STRADELLA. I will get that figure for you. This is both new and used.

The CHAIRMAN. You will have that for us?

Mr. STRADELLA. Yes.

The CHAIRMAN. How much does that represent in dollars and cents?

(The information referred to appears at p. 586.)

Mr. STRADELLA. I will have to work that out, too.

The CHAIRMAN. Now, in your statement—

Mr. STRADELLA. If you would like our annual volume of business in retail financing, I can give you that.

The CHAIRMAN. Specifically, I would like to know what that 42 percent of credit sales to General Motors dealers represents in numbers of cars and in dollars and cents.

Mr. STRADELLA. In dollars and cents, to answer your question this way, the retail volume of GMAC in 1960 was \$4,202 million.

The CHAIRMAN. \$4 billion?

Mr. STRADELLA. \$4,202 million.

The CHAIRMAN. On page 13 near the bottom you say:

No business is automatically directed to GMAC.

On what do you base that "no business is automatically directed"?

Mr. STRADELLA. There was a statement made to the effect that business was automatically directed to GMAC, and I am merely denying that statement, sir.

The CHAIRMAN. Is it actually true, as you seem to indicate at the bottom of page 13 and the top of page 14, that—

GMAC has no entree not available to others. The consent decree specifies that General Motors Corp. cannot give GMAC notice of new appointments without making the same information available to others at their request. Actually, this information is not given to anyone by the car divisions so that there will be no questions raised as to possible violation of the decree.

Is it actually true that no notice is given with reference to newly appointed dealers to GMAC?

Mr. STRADELLA. That is correct.

The CHAIRMAN. No information is indirectly given?

Mr. STRADELLA. We dig it out.

The CHAIRMAN. I beg your pardon?

Mr. STRADELLA. Our own people dig it out.

The CHAIRMAN. They dig it out?

Mr. STRADELLA. They dig it out.

The CHAIRMAN. Are they given any leads to dig it out?

Mr. STRADELLA. Not that anyone else does not have.

The CHAIRMAN. On page 16 you give the comparative figures between GMAC and Commercial Credit Corp. What about some of

the other companies? Would the figures be changed in any way for those other companies?

Mr. STRADELLA. I do not know, Mr. Chairman. I would say that from our experience, these are the lower ones, and it is very hard actually for us to determine the wholesale financing rate of many of our competitors. These we cannot find out. But I would say that generally speaking they would be at least as high, if not higher, if that is of any value.

Mr. MALETZ. You indicate in your statement that GMAC is not pressured in any way on its policies or practices by anyone who is a director or employee of General Motors Corp.; is that right?

Mr. STRADELLA. That is correct?

Mr. MALETZ. It is a fact, is it not, that GMAC is wholly owned by General Motors?

Mr. STRADELLA. That is correct.

Mr. MALETZ. General Motors owns 100 percent of the stock of GMAC?

Mr. STRADELLA. That is correct.

Mr. MALETZ. How many directors does GMAC have?

Mr. STRADELLA. GMAC has 12 directors.

Mr. MALETZ. How many are directors of General Motors?

Mr. STRADELLA. Three, including myself.

The CHAIRMAN. Will you name them all.

Mr. STRADELLA. Mr. Frederic Donner, Mr. George Russell, and I, Charles G. Stradella.

Mr. MALETZ. Who appoints the directors of GMAC?

Mr. STRADELLA. They are elected by the shareholders of the company, the General Motors Corp.

The CHAIRMAN. Isn't General Motors the predominating force?

Mr. STRADELLA. Yes, that is what I said, elected by the shareholders of General Motors Corp.

Mr. MALETZ. General Motors stockholders elect?

Mr. STRADELLA. General Motors Corp.

Mr. MALETZ. General Motors Corp.

Mr. STRADELLA. That is right.

Mr. MALETZ. Selects the directors of GMAC?

Mr. STRADELLA. That is correct.

The CHAIRMAN. That means very likely Mr. Donner or an executive committee presided over by Mr. Donner selects the directors of GMAC?

Mr. STRADELLA. The people, whoever they are, that General Motors designates to do that, yes.

Mr. MALETZ. In other words, General Motors designates the directors of GMAC, is that correct?

Mr. STRADELLA. That is correct. General Motors is the stockholder and elects them.

The CHAIRMAN. For all intents and purposes, General Motors owns all the stock of GMAC. General Motors actually appoints the directors of GMAC?

Mr. STRADELLA. That is right, absolutely.

Mr. MALETZ. And is it your testimony that General Motors does not control the policies of GMAC?

Mr. STRADELLA. That is right, as I said.

The CHAIRMAN. Again, how many directors—

Mr. STRADELLA. Or shall I read it exactly?

I said it is not pressured in any way on its policies or practices by anyone who is a director or employee of General Motors Corp.

The CHAIRMAN. In other words, how many directors are there, again of GMAC?

Mr. STRADELLA. There are 12.

The CHAIRMAN. Twelve.

And those 12 directors are appointed by the General Motors Corp?

Mr. STRADELLA. That is right.

The CHAIRMAN. And General Motors, therefore, appoints the directors to GMAC, General Motors owns the entire stock of GMAC, and still you say that General Motors does not direct the policies of GMAC?

Mr. STRADELLA. I didn't say that. I said that General Motors—I will read it again:

GMAC is not pressured in any way on its policies or practices by anyone who is a director or employee of General Motors Corp.

Mr. MALETZ. Mr. Chairman?

Would it not be more accurate and informative to say that by virtue of 100-percent stockownership by General Motors the policies and practices of GMAC are wholly dictated by General Motors?

Mr. STRADELLA. That would not be true.

The CHAIRMAN. What?

Mr. STRADELLA. That would not be true.

The policies are decided by the board of directors of General Motors Acceptance Corp.

Mr. MALETZ. All of whom are appointed by General Motors?

Mr. STRADELLA. All of whom are appointed by General Motors.

The CHAIRMAN. And if General Motors Corp. were dissatisfied with the policy laid down by the board of directors of GMAC, which it appoints, it could change that board of directors any time it wishes?

Mr. STRADELLA. I would say it has the power to change the board any time it wishes.

I don't think you could take that away.

The CHAIRMAN. I am afraid that I can't be so naive as to believe that General Motors doesn't control the destiny and the policy of GMAC. I can't conceive of that.

Since they own all the stock, they appoint all the directors, they stand behind it, and the fact that they are the parent company gives GMAC a decided advantage you will admit. It may not be as great as some of the detractors of your company indicate, but there is that advantage.

Considering all those factors, it would be incredulous to say that they don't control.

I can't believe that.

Mr. STRADELLA. Mr. Chairman, I can only say this: that we have a board of directors, yes, elected by the stockholders of the General Motors Acceptance Corp. I have attended very many meetings of those boards, and those boards are independent deciding boards.

The CHAIRMAN. For whose interest do you as directors of GMAC work? Do you work in the interests of the stockholders of GMAC? Who are those stockholders?

General Motors.

Therefore, you work in the interests of General Motors.

Mr. STRADELLA. That is one of them. We also work for the interests of our employees. We also work for the interest of our dealers, our customers.

The CHAIRMAN. But you are in business for profit.

Mr. STRADELLA. We are in business for profit, that is right.

The CHAIRMAN. And if you make a profit that inures to General Motors—how much was the profit last year?

Mr. STRADELLA. \$52 million.

The CHAIRMAN. And what was the profit the year before that?

Mr. STRADELLA. 45, I believe.

The CHAIRMAN. And the year before that?

What was the percentage on the net worth, that is profit?

Mr. STRADELLA. I have it in my statement.

In 1960 it was 14.8 percent, and in 1959 it was 14.9 percent.

The CHAIRMAN. Is that after taxes or before?

Mr. STRADELLA. After taxes.

Mr. McCULLOCH. I want to ask this question.

Mr. Stradella, do you know whether CIT or CCC have been able to secure all the credit needed to take care of the business that they have been able to secure?

Mr. STRADELLA. From my conversations with their officers and some of the directors, I would say there was no question about it.

Mr. McCULLOCH. They have been able to secure enough credit?

Mr. STRADELLA. They are very proud of their ability and Mr. Lundell testified—and this is, again, in my statement—that as far as they are concerned, they could borrow money just as cheaply and as well as we could.

Mr. McCULLOCH. Do I understand you to say that they have been able to borrow money as cheaply and in quantities sufficient to meet their needs as GMAC has?

Mr. STRADELLA. Yes.

The first statement Mr. Lundell made himself about the cheapness; the second statement, I am sure I can assure you without any fear of contradiction that they have been able to get all the money that they have wanted.

Mr. McCULLOCH. One further question that has some bearing on the matters which were asked you by the chairman. Who determines the general level of profit that is satisfactory in the operation of your business before you pass on to the borrower the benefits that otherwise would increase your profit?

Mr. STRADELLA. I would say the competition does that.

Mr. McCULLOCH. The competition?

Mr. STRADELLA. The competition.

Mr. McCULLOCH. You do not arbitrarily determine that by your board of directors, then?

Mr. STRADELLA. Oh, no, you can see the results. I mean they vary from 20 percent to 14.8 percent. That is in the statement as well. I don't think you could do it. I mean you have varying money rates all the time.

You can't just change your method of operating or your rates to your dealers with each change in the money market. It just would not be practical.

Mr. McCULLOCH. Over a period of a year you have certain targets, do you not? You are able to estimate generally what the cost of your credit is going to be?

Mr. STRADELLA. Fairly closely, yes, although we have these ups and downs, as you know only too well, which you don't always foresee.

Mr. CRABTREE. Mr. Chairman, may I ask a question.

Mr. Stradella, during the Senate hearings in 1959, Mr. Yntema from the Ford Motor Co. testified that Ford was going to go back into the financing field, and that it would be a slow process, but that it would first go into the areas where Ford dealers were at a competitive disadvantage, because they were unable to obtain rates comparable to those that General Motors dealers obtained from GMAC.

Do you know whether or not Ford has gone into any of those areas, and whether or not it has made any difference on the rates that have been charged?

Mr. STRADELLA. I don't know of my own knowledge, but I have been told that that is true by one of the Ford Credit Co. men. They have gone into certain places. I think that you had better ask them, but I have been told that.

Mr. McCULLOCH. Is Ford Motor Credit Co. paper all recourse paper?

Mr. STRADELLA. That, I do not know.

Mr. McCULLOCH. Yours is all recourse?

Mr. STRADELLA. No, ours is not all recourse.

We have about between 20 and 25 percent that is nonrecourse paper. What the percentage of Ford's is, I do not know.

Mr. McCULLOCH. How do you determine the type of paper that is recourse paper and that which is not?

Mr. STRADELLA. It is just a question of competition again. Where we have to do nonrecourse business to do business, we do it. We prefer the other.

Mr. CRABTREE. Just one further question.

Mr. Yntema also speculated on what would happen in the event GMAC were divorced from General Motors, and I quote; he said this, in part:

I think GMAC could make more money than it is now making by charging a higher rate, and I think that in the long run there would be a great temptation to do that. That is the way the other independent finance companies, by and large, operate.

And then skipping down some, and by the way, this is on page 213 of the hearings, continuing:

I think maybe 10 years from now, after GMAC has begun to behave more and more like a typical finance company, that our competitive disadvantage with General Motors would more or less vanish, but the consumer would be worse off.

Would you care to comment on that, sir?

Mr. STRADELLA. You mean on whether Mr. Yntema is right or not?

Mr. CRABTREE. Well, what would happen in the event GMAC were divorced from General Motors.

Mr. STRADELLA. I don't think you can say. You don't know who is going to own the company, what its board is going to be, what its policies are going to be. I don't think you can.

It is perfectly possible that he is right. It is very speculative. I mean you just don't know enough.

Mr. McCULLOCH. It would depend, in part, on whether the charges were to be based upon all the traffic would bear?

Mr. STRADELLA. Exactly.

Mr. McCULLOCH. Or whether or not there were other matters that were affecting the rate?

Mr. STRADELLA. Exactly. It would depend on the policy of your board and your management, whoever that might be at that time.

Mr. CRABTREE. Just one further question, sir.

There has been a great deal said about whether or not General Motors exercises any influence over GMAC. It is true, is it not, that GMAC is a part of the integral sales operations of General Motors?

Mr. STRADELLA. I don't think I could say yes to the way you phrase that question.

Mr. CRABTREE. Then would you care to answer it subject to your own modifications?

Mr. STRADELLA. No. I would rather you—you might ask Mr. Donner. I don't think I could answer that the way it was phrased.

You mean, do we assist and help General Motors dealers sell cars?

Mr. CRABTREE. I am trying not to answer the question myself, but that which I was wondering—

Mr. STRADELLA. Is that what you mean by your question?

Mr. CRABTREE (continuing). Is whether or not GMAC exists in order to render a service which is a part of the overall selling operation of General Motors?

Mr. STRADELLA. Oh, yes, that was why it was formed, to supply a service that was missing way back in the early days.

Mr. CRABTREE. Now, then, if GMAC were to be spun off, would it still exist for that purpose?

Mr. STRADELLA. That, again, is a question, a speculative question which the management and owners, I would think, would decide at that time.

Mr. CRABTREE. Thank you.

Mr. ROGERS. Thank you, Mr. Stradella. That completes your testimony and we appreciate your coming.

The next witness will be Mr. Frederic Donner.

**STATEMENT OF FREDERIC G. DONNER, CHAIRMAN, GENERAL MOTORS CORP., ACCOMPANIED BY GEORGE RUSSELL, EXECUTIVE VICE PRESIDENT, AND A. F. POWER, VICE PRESIDENT AND GENERAL COUNSEL, GENERAL MOTORS CORP.**

Mr. DONNER. I am Mr. Donner and I have with me Mr. Russell, who is executive vice president of finance, General Motors, and I am asking Mr. Power, who is our general counsel and vice president, to be with me also.

I submit my statement for the record, as was suggested by the chairman at the opening of the afternoon session.

(The complete statement of Mr. Donner follows:)



STATEMENT

BY

FREDERIC G. DONNER

CHAIRMAN, GENERAL MOTORS CORPORATION

BEFORE THE ANTITRUST SUBCOMMITTEE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 71

JUNE 9, 1961

509





Mr. Chairman, my name is Frederic G. Donner. I am Chairman of the Board of Directors and Chief Executive Officer of General Motors Corporation. With me are Mr. George Russell, Executive Vice President - Finance and Mr. A. F. Power, Vice President and General Counsel of General Motors.

General Motors has been invited to appear before this Committee to testify regarding H.R. 71 which would prevent manufacturers of motor vehicles from financing and insuring the sales of their products. General Motors welcomes this opportunity again to set forth the reasons for its opposition to such proposed legislation.

In the interests of brevity and to avoid repetition, many of the points already made in the GMAC statement have been omitted in this statement.

#### Summary of General Motors' Position

General Motors' reasons for opposing the legislation under consideration by this Committee may be summarized as follows:

1. The proposed bill represents discriminatory legislation in a most extreme form. Ostensibly aimed at a group of manufacturers in a single industry -- the motor vehicle industry -- its target avowedly is General Motors. Its enactment would set an unsound and dangerous legislative precedent which would have a much broader and damaging effect eventually on all industry. Its objective is to prevent General Motors and other motor vehicle manufacturers from engaging in normal and lawful functions, universally recognized as desirable and necessary adjuncts to the manufacture and sale of major durable products.

2. The legislation has the sponsorship of certain sales finance companies who apparently wish to insulate themselves from the rigors of effective and fair competition. They are not content with the safeguards of the existing anti-trust laws under which all industries in interstate commerce operate. Rather they seek the additional protection of self-serving, special legislation.
3. The supporters of this legislation were unable to demonstrate at the 1959 Senate Subcommittee hearings dealing with similar bills that dealers or ultimate purchasers of motor vehicles would be benefited if such legislation were passed. Now in 1961, the further and equally unsupportable claims are made that passage of the legislation would not only increase competition in the automobile industry and reduce automobile prices but would bring back full employment to the industry and increase exports. There is no basis for such conclusions. The fact is that the proposed legislation could more probably be expected to have the opposite effect. The result could well be higher finance charges for both dealers and retail purchasers. This, in turn, would tend to increase the over-all cost of motor vehicles to consumers and hence reduce sales and employment.
4. Sponsors and supporters of the legislation assume the obviously false premise that free competition does not exist in the motor vehicle industry, that General Motors occupies a monopoly position in the manufacture and sale of motor

vehicles and that GMAC likewise occupies a monopoly position in the automobile sales finance field. These assumptions are not supported by the facts.

5. The legislation would not benefit motor vehicle dealers; nor would it benefit their customers or the public. On the contrary, it would deny to all of them the lawful and legitimate benefits resulting from the exercise by manufacturers of this normal business function.

#### Facts about Automobile Financing

Institutions of many kinds other than sales finance companies engage in and do most of the financing of the retail sales of automobiles. These include commercial banks, credit unions, small loan companies and automobile dealers themselves.

There are two categories of sales finance companies. The "factory-affiliated" sales finance company is a manufacturer's subsidiary which provides a financing service for products sold by dealers franchised by the parent corporation. A compelling reason for the manufacturers to provide financing assistance is to facilitate the sale of their products by assuring to dealers and their retail customers a continuing financing service with high standards and low costs that is readily available everywhere, and that will be concerned with the goodwill of the customers who are buying the manufacturer's products.

In the automobile industry General Motors and Ford have subsidiaries engaged in passenger car sales financing; viz., General Motors Acceptance Corporation and Ford Motor Credit Company. American Motors has a sales

finance subsidiary, Redisco, that at present is engaged principally in the financing of such household appliances as refrigerators, electric ranges, laundry equipment, freezers and room air conditioners. Recently, however, Redisco announced financing of leased fleets of passenger cars. It is reported that there are at least 125 finance companies affiliated with manufacturers of products other than motor vehicles. Examples include General Electric Credit Corporation, Westinghouse Credit Corporation, RCA Credit Corporation, Sears Roebuck Acceptance Corporation, Caterpillar Credit Corporation, Allis-Chalmers Credit Corporation, John Deere Credit Corporation and many others.

The second category of sales finance company is the "non-affiliated" company that is not associated with a manufacturer, and generally solicits business from any and all dealers.

Sales finance companies, as well as banks, credit unions and other sources of dealer and consumer credit, perform the essential economic function of gathering funds in large amounts in the form of capital and borrowings and making them available generally in small amounts to those unable to purchase major durable goods for cash. Their financing charges reflect the cost of the funds borrowed, operating expenses, provisions for credit losses and a provision for profit.

The business of financing the sale of automobiles is divided into two categories. The first category has to do with the financing of the car inventories carried by the dealer, usually referred to as

"wholesale" financing. This financing which is very important to the dealers furnishes the dealer with the funds to pay the manufacturer for a car at the time the dealer purchases the car and before the dealer sells it and receives payment for the retail sale.

Second, is the retail side of the business. This is important to the general public as well as the dealer. When a dealer sells a car, he may negotiate an instalment sales contract with the purchaser for a portion of the purchase price of the car. He may hold the contract, as many dealers do, or discount it with a bank or a sales finance company. In some instances, the car purchaser may deal directly with a lending institution -- generally a commercial bank or credit union. Approximately two out of three cars are bought on credit. At the end of last year there were some 14 million retail automobile accounts. About \$18 billion of retail automobile instalment credit was extended in 1960 in the United States.

About 46 per cent of this retail automobile instalment credit was extended by commercial banks. GMAC accounted for 18 per cent and other sales finance companies for 23 per cent. The balance of 13 per cent was accounted for by credit unions, small loan companies, etc.

#### Why GMAC Was Formed

General Motors Acceptance Corporation owes its origin to a basic need to provide an adequate and reliable financing service for General Motors dealers and their customers on a nation-wide basis at a reasonable cost.

In the early days of the industry, automobiles were regarded as a luxury, an expensive toy or as equipment for a form of sport -- in other words, a pleasure vehicle. They were produced in limited quantities because the market was restricted primarily to people of means who paid for them outright.

By the end of the first World War two things were happening: the utility of the automobile had become established, and spendable income of people in the middle and lower income groups was increasing. Many people desired to provide their own transportation for both business and pleasure purposes and were interested in purchasing automobiles. In many instances, the buyer could not make full payment for a car in cash, but he was able, financially, to purchase one on a monthly payment plan. Dealers, however, did not have the capital to provide this service for prospective customers. In fact, in many cases they did not have the capital to finance their own growing inventories of new and used cars.

Bank facilities were not available to provide credit for the dealer and the consumer in this new field. The few then existing sales finance companies, which had come into being after the turn of the century to finance accounts receivable of certain manufacturers and retailers, began to finance some automobile purchases. The facilities were very inadequate, both in terms of funds available and areas of the country serviced.

To help fill the void that existed, General Motors Acceptance Corporation was formed by General Motors Corporation. It was incorporated under the Banking Laws of the State of New York on

January 24, 1919. Its purpose was to provide, under uniform policies and at reasonable cost, a financing service for General Motors dealers and their retail customers on a nation-wide basis. Such a low-cost fair and efficiently operated finance service was and is considered by the management of General Motors to be just as essential to the effective merchandising of cars on a volume basis as is, for example, making sure that its product is dependable, well-made and attractive and that it is marketed through an efficient nation-wide distribution system.

In order to provide the required service, GMAC was originally set up to operate on a nation-wide basis; it has continued to operate on a nation-wide basis over the years. It is distinctive in this respect. Thus, it renders a financing service to dealers and their customers that has proved of particular value in the many geographical areas where non-affiliated sales finance companies and local banks have not provided low-cost automobile financing services in line with customer needs. Furthermore, if other financing services are for any reason withdrawn or restricted, GMAC's wholesale and retail financing services continue to be available.

Planning future production for projected markets would be unrealistic unless the manufacturer was assured of the national availability of both wholesale and retail credit regardless of any wide economic fluctuations in local, regional or national markets. This credit must be available at satisfactory rates, on realistic terms and be ready to meet the requirements of the national market.



The finance source that would best serve the industry's needs must be ready to offer a satisfactory plan to finance both new and used passenger cars. It must also be prepared to offer a continuing source of wholesale credit to dealers regardless of the wide cyclical swings that characterize the automobile business.

The ownership of a finance subsidiary is a proper extension of the vehicle manufacturing business in order to provide the necessary financing facilities to dealers and their customers.

In the Senate hearings on auto financing legislation in 1959, Chrysler Corporation outlined the disadvantages of not owning a finance subsidiary. F. W. Misch, a vice president of that corporation, stated on February 26, 1959 during the course of the hearings, as follows:

"Banks and finance companies have made a major contribution to the growth of the American economy and to rising standards of living for millions through their development of large-scale automobile financing. Certain financing institutions have done outstanding jobs for both dealers and retail customers, both in terms of all-round quality of their services and the prices at which they make the services available. The outstanding services some offer and the reasonably adequate services many others offer, however, are not wholly representative of the situation throughout the United States. In many areas, particularly metropolitan areas where competition is most intense, credit facilities are available on a sound basis. But this is not the case throughout the country." (Transcript page 162)

He then enumerated a number of problems facing the dealers, such as inequities in wholesale and retail rates, difficulty in securing adequate wholesale credit, and curtailment of wholesale credit when dealers do not supply an adequate amount of profitable retail paper.

Mr. T. O. Yntema, a vice president of Ford Motor Company, also referred to this need for wide geographical coverage in his testimony at the same Senate Subcommittee hearings. He said:

"Our entry into the automobile finance business would be especially beneficial to automobile dealers and consumers in the geographic areas where rates are usually high because of lack of effective bank competition. Our finance subsidiary would be particularly helpful to the small automobile dealer who is least able to establish strong bank connections or achieve a good bargaining position with a finance company." (Transcript pages 217-218)

At the same hearings, a representative of the National Automobile Dealers Association testified regarding the availability of GMAC financing at all times. Pointing out that dealers require adequate financing "to weather the storm of an unfavorable market," he declared:

"The unwillingness on the part of banks and other financial institutions to provide these funds, under terms and conditions which the small dealer businessman can afford, gave rise in the first instance to GMAC and finance organizations as we know them. It is true that our GM dealers who are members of NADA have benefited because of the establishment and growth of GMAC.

"We feel that the other manufacturers should be accorded the same privilege of looking after the interests of their own distributors, which most certainly is also in the public interest."  
(Transcript page 471)

In 1925, GMAC found itself in a position where physical damage insurance protection was not obtainable from existing insurance companies. Such protection was essential in much the same manner as insurance on homes purchased on credit. The purchasers, the dealers and GMAC needed this insurance coverage. For that reason, a physical damage insurance company was formed in 1925 by General Motors to provide a source for protection on automobiles

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GMAC financed at retail. This company, General Exchange Insurance Corporation, was organized under the Insurance Laws of New York State and was a wholly-owned subsidiary of General Motors Corporation. Other finance companies also formed insurance affiliates for the same reason.

In 1939 Motors Insurance Corporation was organized as a subsidiary of GMAC, under the Insurance Laws of the State of New York to take over the physical damage insurance business of General Exchange Insurance Corporation. In 1960, these two insurance companies were merged and Motors Insurance Corporation became the surviving company.

#### GMAC Today

Considered broadly, GMAC has grown with the automobile industry and with General Motors. However, it has not grown at the same rate as have sales of new and used cars by General Motors dealers, who are the only automobile dealers to whom GMAC service is available.

GMAC furnishes wholesale credit for approximately three-fourths of the cars sold by General Motors to its dealers. This is not surprising because, as the statement by the National Automobile Dealers Association at the 1959 Senate hearings pointed out:

"The plain fact is that the independent (non-affiliated) finance companies and the banks do not regard wholesale automotive financing as particularly desirable business, and have preferred to concentrate on the automobile dealer's retail contracts, taking wholesale financing at a higher rate but only where the dealer agrees to finance his retail sales with them." (Transcript pages 471-472)

This reluctance to engage in wholesale financing is substantiated by testimony of still others at these Senate hearings. For

example, the Chairman of the Board of Directors of Universal C.I.T.

Credit Corporation, L. W. Lundell, said:

"There prevails a tendency to believe wholesale financing is a plain, simple, safe bank-lending type of operation. It is not this at all. The risks in wholesale automobile financing are considerable, the amounts involved very large. It is the finance company, however, that is left holding the bag when economic dislocations take place, dealers go out of business, dealers sell cars for which they are unable to pay, find themselves in a frozen position or have many other reasons for not being able to pay their debts." (Transcript page 344)

Mr. Lundell also said:

"Wholesale rates to dealers do not compensate for the costs of money risks taken nor the expense of operation." (Transcript page 346)

The experience of GMAC, perhaps because of the efficiency of its operations, does not bear out this latter statement. Nevertheless, those who believe in the Lundell position must be reluctant to extend wholesale financing to dealers. Admittedly, wholesale financing involves risk, as does any financing. But GMAC, as was pointed out in its statement, has found wholesale financing to be a profitable part of its business.

The importance of having GMAC continue to provide wholesale financing is emphasized by the fact that at any one time General Motors dealers have need for upwards of \$1 billion of wholesale credit. In view of the reluctance of banks and other finance companies to provide wholesale financing at competitive rates, it might well be difficult for dealers to obtain this volume of credit if the proposed legislation were enacted.

At the retail level, GMAC has pointed out in its statement that, although in business for over 40 years, it finances approximately 18 per cent of the total automobile credit extended and approximately

42 per cent of the credit sales of General Motors dealers. Another way of looking at it is that out of each \$5.00 of all automobile instalment credit purchases, \$4.00 is financed by the competitors of GMAC and \$1.00 by GMAC; also GMAC's competitors finance over half of the instalment credit purchases from General Motors dealers.

#### Position of Commercial Banks

A post-World War II development has been the increased activity of the 13,000 commercial banks and their branches as a source of retail automobile credit, not on a country-wide basis but in thousands of individual communities. Before the war banks as a group never accounted for more than 32 per cent of retail automobile credit outstanding, but they have steadily increased their proportion of the business and in recent years they have averaged around 45 per cent.

The non-affiliated sales finance companies have also continued to grow substantially in absolute terms. For example, credit outstanding accounted for by them now totals \$4.2 billion, or four and one-half times what it was in 1941. However, while they accounted for almost 40 per cent of total retail automobile credit outstanding in 1941, they now account for only about 24 per cent. Their decline in market penetration has been approximately balanced by the increase in the banks' penetration.

#### Influence of GMAC

GMAC has always been conservative in its policies with respect to down payments and length of term, believing that the orderly development of its business and its customer good will are best

served by such policies. Its rates have generally been favorable to the dealer. It has refrained from incorporating unnecessary extras in its charges.

GMAC has had a constructive influence on automobile instalment financing that has not been confined to terms or rates. It has been apparent over the years in many areas. GMAC policies and practices have been important factors in the improvement of standards for the industry.

For example, on the question of "terms," GMAC has continually counseled both dealers and purchasers as to sound principles and good practices in the use of instalment credit. This is evidenced, for example, by many years of extensive national advertising on the theme "pay down as much as you can and the balance as soon as you can." This advertising program extends back into the Thirties and is still emphasized. In 1953 an extended advertising campaign by GMAC emphasized that "The cheapest way to buy a car is to pay your own cash outright. That way, you have no financing costs whatever. The next cheapest way is to pay as much down as possible and the balance as soon as possible."

Customer rates, which as a matter of practice are set by the dealer, constitute another area in which GMAC has been active in recognizing the interests of the retail customer. In recent years many states have assumed the responsibility for customer protection through legislated maximum rates. However, where no legislation exists, GMAC will not purchase contracts from a dealer if the rate charged to the customer by the dealer exceeds the legal maximum in

neighboring states. The GMAC 1957 Annual Report stated in reference to legislated maximum finance charges:

"These ceilings vary among states. In some instances they seem unduly high or, at least, not sufficiently low to eliminate unfavorable comment, even though approved by the duly elected representatives of the people. GMAC urges all concerned with such legislation to adopt a realistic approach and to sponsor provisions which will result in fair treatment for all and a favorable atmosphere for this type of activity."

GMAC has had a long-standing policy of providing assistance to customers who are unable to meet their obligations. This assistance has taken the form of extensions, where the retail contract is extended up to a maximum of 90 days, and renewals, where the original terms of the contract are rearranged on a more liberal basis. This policy of GMAC with respect to the collection of purchaser obligations recognizes the equities of the purchaser and the dealer.

With respect to group creditor life insurance to cover the unpaid balance in the event of the death of a time buyer, the GMAC standard of low cost to the purchaser is based upon a policy of charging the customer only the exact amount of the premium paid by GMAC to the insurer. This insurance is written by the Prudential Insurance Company. We believe that the present cost is lower than the charges of any major competing finance company.

GMAC's physical damage insurance subsidiary, Motors Insurance Corporation, has always properly classified car purchasers for physical damage insurance. A hearing on automobile insurance classification practices by the Senate Committee on Interstate and Foreign Commerce in 1957,

produced this statement relative to GMAC from a representative of the Association of Better Business Bureaus:

"From the outset, too, one of the nation's largest national finance companies scrupulously refrained from becoming embroiled in this clever money-grabbing device. The nation's Better Business Bureaus lack so much as a scintilla of evidence to connect this company and its insurance affiliates with this unparalleled plan."

Reply to Arguments Supporting  
Proposed Legislation

The supporters of the legislation under consideration by this Subcommittee have made it abundantly clear that their real objective is simply to force General Motors to divest itself of its financing and insurance subsidiary, GMAC, which it has maintained for many years as a necessary and legitimate service adjunct to its motor vehicle business, and thus to eliminate effective competition from this source.

The most vigorous and at times the sole proponent of divestiture has been the American Finance Conference, an association of some of the non-affiliated sales finance companies.

The Conference apparently believes that competition would be "softer" if this or similar legislation were enacted. Not content with the safeguards of the antitrust and related laws that were designed to insure and protect legitimate competition, the Conference seeks the enactment of special legislation to insulate its members from such competition.

In this connection the 1959 statement of William T. Gossett, Vice President and General Counsel of the Ford Motor Company, is pertinent.



He said:

"I think that if General Motors has violated the Antitrust Laws, if they have undue power, that some action ought to be taken, appropriate action, and I think it will be taken. The question is whether we should have legislation such as this which says, 'We don't care whether they violate the Sherman Act or not. We think there are some independent companies here, finance companies, who have made a certain rate of profit, and we want to protect them and we don't want competition by the manufacturers.'" (Transcript page 227)

General Motors and GMAC, recognized as leaders and innovators, are accused by the Conference of being "giant monopolies" engaged in many unidentified and nefarious practices which restrain trade and allegedly give GMAC some sort of unfair advantage over its less efficient non-affiliated finance company competitors. Many of the ills besetting the nation are attributed to the continuing association of General Motors and GMAC. Conversely it is claimed, without factual demonstration, that divestiture will bring manifold benefits, not only to dealers and purchasers of motor vehicles, but to the automobile industry as a whole and even to the entire economy.

A leaflet issued by the American Finance Conference and entitled, "The Secret of Monopoly in the Auto Industry," is an example of the unrestrained statements that have been and are being made to support divestiture. The first page shows two hands manipulating three shells. A few quotations follow:

"A multi-billion-dollar monopoly grips the automobile industry."

"GMAC is a key tool by which General Motors entices and controls the biggest and strongest dealer organization so as to dictate sales volume and policies."

"GMAC is basic to GM's shuffling huge subsidies as in a colossal 'shell game'".

It is interesting to note that, at the 1959 hearings, American Finance Conference witnesses and other supporters of S. 838 and S. 839 placed greatest emphasis on the salutary effects that the proposed legislation allegedly would have on the finance business and the benefits it would bring to finance company clients -- dealers and retail customers alike.

This time a significant change appears to have occurred. Even though the proposed legislation is almost identical with that considered by the Senate Subcommittee on Antitrust and Monopoly two years ago, the supporting arguments are no longer identical. The American Finance Conference, for example, no longer rests its case on the allegation that benefits would result to the sales finance business from divestiture. The identical legislation today, is intended primarily to revitalize the automobile industry and the economy.

The American Finance Conference leaflet declares:

"Divorcement of General Motors Acceptance Corporation from General Motors not only will loosen the grip of the present monopoly and strengthen economic freedom in the auto industry. It will also stimulate our entire economic system.

"It will help to:

- Restore free competition to the U.S. automobile market.
- Reduce automobile prices to the car-buying public by removing the power General Motors has to establish price patterns for the entire industry.
- Reduce finance charges by stimulating normal competition.
- Maintain the U.S. in its leading position in the world automobile market.
- Bring full, more even employment to the U.S. automobile industry."

While many of the allegations of the American Finance Conference and other proponents of divestiture legislation have been effectively answered in previous statements by General Motors and others, the introduction of new charges makes it necessary to review again the facts relating to these allegations and restate GM's position on the various issues relating to the legislation.

The automobile industry is a highly competitive industry, and this obvious fact has been attested to many times by impartial analysts and investigators. However, if monopoly did exist, no additional legislation would be needed. The remedy would lie in enforcement of the antitrust laws.

The business of financing automobile sales is equally competitive. GMAC accounted for only 18 per cent of all new and used retail passenger car credit extended in 1960. GMAC provided the financing for about 42 per cent of combined new and used car credit sales made by General Motors dealers.

In its statement at the 1959 hearings the National Association of Manufacturers declared:

"Proponents of the divorcement approach raise the curious contention that legislation is required to restore competition to the automobile finance field. This is difficult to sustain in the first instance, if for no other reason than their own references to the more than 7,300 finance companies and banks which compete in this field alone. Thus, it challenges credulity to believe that a manufacturer monopoly could develop in the face of hard competition from banks, personal finance companies, sales finance companies, credit unions, independent dealers and a variety of miscellaneous lenders." (Transcript page 467)

Once the thousands of commercial banks, most of whom are small, recognized the desirability of entering the consumer instalment credit field, they experienced no difficulty in doing so. The banks increased their share of the automobile credit outstanding to about 45 per cent in 1960 as compared with 32 per cent in 1941 with the largest part of the increase coming from instalment obligations purchased from dealers. This was done in direct competition with GMAC and other established sales finance companies.

At the 1959 hearings Mr. Yntema testified:

"From time to time we have let it be known that we wished finance companies would make available to our dealers financing and insurance services and rates competitive with those provided by GMAC. The largest independent finance company told us bluntly it would not meet GMAC rates."  
(Transcript page 206)

The statement filed by the National Association of Manufacturers maintained among other things that the proposed legislation would further lessen aggressive competition in the industry. It said:

"The thrust of this entire legislation appears to be upon protection for competitors, not for consumers. No evidence is adduced, or contention offered, that interest rates to the consumer will be lowered through the disappearance of manufacturer-financing. There is admission that they may be higher in some instances. There is also negative evidence that this legislation is of no concern to the consumer...

"It is regrettable to witness this new instance of business entrepreneurs pleading before the Congress for special legislation to protect them from the effects of hard competition, whether in finance or insurance." (Transcript page 468)

The statement filed by the National Automobile Dealers Association said:

"We are of the firm conviction that the very existence of GMAC has enabled our members who are not GM dealers to obtain services of better value and quality from other finance companies. Similarly, we are not of the opinion that the existence of GMAC has imposed any severe restrictions or penalties on the finance organizations which have supported this proposed legislation, and we feel that the divorce of GMAC from GM would react, in the final analysis, to the detriment of both the automobile dealer and the automobile consuming public." (Transcript page 471)

Automobile dealers are independent business men. They alone make the selection of the agencies to which they sell their retail receivables. General Motors dealers may or may not use GMAC to finance their own wholesale purchase of automobiles, or they may or may not use it to discount the retail contracts of their customers.

The National Automobile Dealers Association statement declared:

"...if the dealer can obtain a better rate from an independent finance company or a bank, he can take it, but if he finds no better rate he can always take the very reasonable GMAC rate." (Transcript page 472)

And again:

"The GM dealer can give his wholesale business to GMAC and then shop around for the lowest available retail rate from banks and independent finance companies." (Transcript page 472)

The fact that about 75% of General Motors' new car shipments are financed under the GMAC wholesale plan but that only 46 per cent of General Motors dealers' new car time sales are discounted by GMAC is proof that many dealers, like retail customers, do "shop around" and sell their paper at the best terms available.

Despite this evidence, unsupported allegations continue to be made that General Motors "forces" its dealers to use the services of

GMAC. Apart from the fact that it is not true, coercion would be a violation of the anti-trust laws and of the Consent Decree of 1952, and should such allegations be established, adequate remedies are available.

Significantly the only two dealers who submitted statements that were incorporated at the 1959 hearings referred to the untruth of the charges of coercion.

The late H. A. Crockard, the President of Crockard Chevrolet Company, Berkeley, Calif. and Director of NADA and Chairman of its Industry Relations Committee, said:

"There has never been a time that even an inference has been made that I, as an automobile dealer, should use General Motors Acceptance Corporation in any way, shape or form. The fact of the matter is that I have used other facilities from time to time without any criticism." (Transcript page 479)

David E. Castles, President of Castles, Wilson Buick Co., St. Louis, Mo. testified as follows:

"I have been dealing directly with General Motors Acceptance Corporation and their insurance subsidiaries since 1923, now 36 years, and as a retail automobile dealer, I believe that my experience is of some value. I am aware that there were charges against General Motors and its subsidiaries, of coercion and intimidation, leading to an action by the Government against the several companies, in the late thirties. I believe that, since that time, there have been no reports from anyone, of coercion tending to channel General Motors dealers' business through their finance and insurance subsidiaries. Furthermore, I can say to you that in the 36 years that I have done business with General Motors, and General Motors Acceptance Corporation, there has been no coercion or pressure of any kind that might force our company to finance and insure our retail sales with General Motors." (Transcript pages 468-9)

It has been charged that GMAC's charges to its customers are "measurably less than those of its competitors." This is attributed

"in large part to its ownership by General Motors." Since it has been demonstrated in the statement submitted by GMAC that GMAC is not in a position to borrow at lower cost than other major companies, and any superior efficiency of GMAC is denied by its competitors, the only remaining explanation that they can offer is that General Motors "subsidizes" GMAC in some way, such as by guaranteeing the obligations of GMAC, or by under-capitalization of GMAC, or by accepting an unreasonably and non-competitively low return on its investment in GMAC. The facts are these.

First, General Motors does not guarantee GMAC's obligations.

Second, the rate at which GMAC borrows money and the amount it borrows does not indicate that there is under-capitalization in the judgment of the lenders, since GMAC has consistently borrowed all of its requirements at minimum competitive rates.

Third, an examination of the return on the General Motors investment in GMAC certainly demonstrates that GMAC has not been subsidized by permitting it to operate at a low profit level.

Any advantage that General Motors may derive from its ownership of GMAC is one that any company derives from a legitimate, well-managed, well-run and profitable operation that competitively

serves the needs of both its customers and its dealers by assuring them adequate financing facilities for its products at competitive rates. Such a relationship is assuredly lawful and in the best interest of the public, the parent Corporation and its dealers.

To destroy this relationship by legislation would also set a precedent for arbitrarily limiting the business activities in which companies legally may engage; selfish interests would surely be expected to capitalize on such a dangerous precedent.

The National Automobile Dealers Association has stated:

"It is our desire to preserve to all manufacturers the freedom to adopt any ethical business procedures which they may elect so long as such procedures are not in violation of existing law and the public interest."  
(Transcript page 470)

Contrary to what proponents of the proposed legislation would have this Subcommittee believe, divestiture would not increase competition in the sales finance field or benefit dealers or their customers. The actual effect of preventing automobile manufacturers from engaging in sales finance activities would be quite different from those publicly claimed by these proponents, principally because competition would be lessened.

At present several broad groups compete for the automobile financing business -- the commercial banks, the non-affiliated sales finance companies, the factory - affiliated sales finance companies, credit unions, small loan companies, etc. This competition is particularly effective because the several groups have broadly differing objectives and hence diverse policies and practices. This gives both the dealers and consumers a variety of choices. Should this legislation



be enacted, however, the factory - affiliated companies would be eliminated from competition. The principal effective competition facing the non-affiliated sales finance companies then would be the commercial banks, who are not permitted to operate on a national scale.

Competition would actually be decreased rather than intensified by reason of the fact that the manufacturers would be enjoined from engaging in the business.

One result might well be that all parts of the nation would not be adequately or competitively served by financing facilities. Non-affiliated sales finance companies tend to concentrate their operations in areas that are most prosperous or where demand for financing is greatest and most profitable. A commercial bank by its very nature only renders a localized service or at most a regional one to its customers. Neither has the manufacturer's responsibility for and interest in supporting a countrywide distribution system.

#### Legal Aspects of Proposed Legislation

The legislation under consideration by this Subcommittee raises two fundamental legal questions: (a) Is it unconstitutional, and (b) is it at variance with the established and declared legislative intent of the Congress?

When H.R. 71 was introduced on January 3, 1961, it was stated that, "The purpose of this bill is to divorce General Motors Acceptance Corporation from General Motors Corporation and to restore free competition to the American automobile market." This statement appears on page A-4 of the Appendix to the Congressional Record as published for January 4, 1961.

This statement raised the question as to whether this legislation is constitutional under the equal protection and due classification provisions of the Fourteenth Amendment. In 1916, the Supreme Court of the United States in ruling unconstitutional a statute relating to the business of refining sugar declared:

"The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained...

"The presumption created here has no relation in experience to general facts. It has no foundation except with tacit reference to the plaintiff. But it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime." (McFarland v. American Sugar Refining Co. 241 U.S. 79, 86)

The Supreme Court has uniformly recognized that discriminations having no reasonable relationship to the difference between two classes of companies are arbitrary and unconstitutional. Thus, the Court, particularly where competitors are involved, has repeatedly held that "...mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed...'" (Hartford Co. v. Harrison, 301 U.S. 459; 462 [1937])

It would be particularly arbitrary to prohibit automobile manufacturers from competing in the financing and insuring of the sales of motor vehicles while permitting other manufacturers who operate finance companies incidental to their main business to continue to do this. In the afore-mentioned case of Hartford Co. vs. Harrison, 301 U.S. 441 (1937), a State statute which permitted mutual insurance companies to act through salaried resident employees but excluded stock insurance companies from the same privilege was deemed arbitrary and

unconstitutional. The basic considerations are indistinguishable from those which are presented by this legislation.

With respect to legislative precedent, it has been the consistent position of Congress to permit companies to form subsidiary concerns as a means of conducting normal business affairs and appropriate related activities. In enacting Section 7 of the Clayton Antitrust Act in 1914, Congress specifically provided:

"Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

Significantly, when Congress amended Section 7 of the Clayton Act by the Antimerger Act of December 20, 1950, this paragraph was left intact. Of equal significance is the fact that in 1956 the 84th Congress, in enacting the Bank Holding Company Act specifically recognized the reasonableness, if not the necessity, of permitting industrial concerns to own or control banks operated as aids to the main business of the companies.

Thus, in the broad declaration of policy stated in 1914, and reaffirmed in 1950 and in the specific exemption of financing affiliates in the Bank Holding Company Act of 1956, Congress has consistently maintained that the formation of subsidiary corporations for conducting and implementing natural and legitimate financial activities relating to a corporation's business is appropriate and desirable.

It is anomalous that the legislation now proposed has the declared and sole objective of depriving General Motors of financing and insurance affiliates whose activities are closely akin and a necessary adjunct to the Corporation's main business. This represents a basic and fundamental departure from the declared legislative and public policy of Congress. There is, and in our view can be, no logical basis for the distinction between permitting a manufacturer to own a bank incidental to and in aid of his principal line of business and permitting a manufacturer to have a financing affiliate designed to provide services similar or competitive to those which might be offered through a banking institution.

Even were the allegations of the proponents of the proposed legislation accepted in full, which obviously cannot be done, no abuse or practice can exist which could not be corrected without legislative action. Adequate safeguards are provided through existing laws. GMAC's activities are regulated and subject to the direction of the Superintendent of Banking of the State of New York, and, of course, to the antitrust and related statutes of the United States.

In 1952 the Department of Justice abandoned divestiture litigation, which had been initiated fourteen years earlier in 1938 and entered into a consent decree under which General Motors and GMAC, while enjoined from any unfair competitive practices, are permitted to continue their legitimate activities and objectives.

Periodic investigations, as well as the record of the hearings held in connection with similar legislation in 1959 during the 86th Congress, apparently have disclosed no basis for any proceeding involving alleged violations of the consent order or of the antitrust and related statutes.

With the public so fully protected under existing laws and decrees, there can clearly be no need for this proposed special and discriminatory legislation.

This point was emphasized by the Chairman of the Federal Trade Commission in a letter dated February 24, 1959 addressed to the Honorable James O. Eastland, Chairman of the Senate Committee on the Judiciary, commenting on the 1959 proposals.

He wrote:

"In principle, the Commission believes that individual instances of alleged restraints of trade are usually best approached by particular administrative or judicial proceedings under the general antitrust laws and that the enactment of legislation directed to a particular industry should be attempted, if at all, only in extreme circumstances after no alternative remains untried. Also, legislation for a particular industry tends to open the floodgates for further such special legislation covering other individual industries so that the general law may become so riddled with exceptions that it becomes the exception rather than the rule. Therefore, the Federal Trade Commission has traditionally opposed variations of the general antitrust laws to govern conduct applicable only to one segment of our economy."  
(Transcript Pages 7-8)

#### Conclusion

If motor vehicle manufacturers are to be prohibited from "financing and insuring the sales of their products," it will be contrary to the interests of dealers, retail purchasers and the economy generally. This is because the inevitable result would be an increase in rates to consumers and interference with the orderly marketing of automobiles.

General Motors Corporation does not gain an unfair competitive advantage over its competitors from its affiliation with GMAC, nor does GMAC gain an unfair competitive advantage over its competitors from its affiliation with General Motors Corporation. The commercial

banks, who finance the largest portion of the time sales business, are competing successfully in obtaining the business of General Motors dealers.

The proposed bill represents discriminatory legislation in a most extreme form. Its enactment would set an unsound and dangerous legislative precedent which would have a much broader and damaging effect eventually on all industry.

Support of the proposed legislation by certain of the non-affiliated sales finance companies derives from their wish to avoid, through special class legislation, the competition of affiliated finance companies.

The conclusion cannot be escaped that, should all the affiliated finance companies be divested from manufacturers, competition would be lessened; it would not be increased.

Mr. ROGERS. You may proceed with your testimony.

Mr. DONNER. I understood I was to be questioned on the statement.

Mr. ROGERS. Your statement has been accepted for the record.

Counsel will proceed with the asking of questions.

Mr. MALETZ. Mr. Donner, your statement indicates that the pending bill represents discriminatory legislation in a most extreme form which would set an unsound and dangerous legislative precedent, is that right?

Mr. DONNER. I believe I did.

Mr. MALETZ. Are you familiar with the Bank Holding Company Act of 1956?

Mr. DONNER. I will have to confess that I am not a lawyer, and what was said in my statement was based upon discussions with counsel and represents the views of counsel. The overriding statement that you mentioned, I do believe. The specific reference to the Bank Holding Act, I must admit, I have to rely upon advice of counsel.

Mr. MALETZ. Well, now, the Bank Holding Company Act provides for the divorcement by bank holding companies of investments in business extraneous to banking, is that not true?

Mr. DONNER. I will rely on counsel for that.

Mr. POWER. I would have to see the act. I am not disputing it.

Mr. MALETZ. You see, Mr. Donner, I believe your statement made some reference to the Bank Holding Company Act.

Mr. DONNER. I can speak to the point. I just don't want to say I know, of my own knowledge, but I would be perfectly willing to speak to your point.

The CHAIRMAN. Your counsel probably wrote that portion of your statement. Maybe he could answer.

Mr. DONNER. I don't think I made the point while you were in the room, Mr. Chairman.

I relied on counsel's advice as to the facts. I do take a little responsibility for the wording of my statement.

Mr. MALETZ. Has it, Mr. Donner, come to your attention that the principal effect of the Bank Holding Company Act was to divorce the Occidental Life Insurance Co. from ownership by the Transamerica Bank Holding Corp.?

Mr. DONNER. I don't believe that was brought to my attention, no, sir.

Mr. MALETZ. Was it also brought to your attention that the chairman of the board of Transamerica, Mr. Frank Belgrano, testified before the Senate Banking Committee on that pending legislation and made precisely the same argument in opposing that bill that you are making now: that it was novel and a precedent?

Mr. DONNER. I am sorry, I am not familiar with that.

Mr. MALETZ. Can you remember that the Congress enacted the Public Utility Holding Company Act authorizing the Securities and Exchange Commission to break up public utility holding companies so as to limit the operations of any holding company's system to a single integrated public utility system?

Mr. DONNER. I am familiar with the fact that that happened, yes.

Mr. MALETZ. And I take it that you are also familiar with the fact that the Public Utility Holding Company Act authorized and resulted in divestiture by certain companies?

Mr. DONNER. That is correct.

Mr. MALETZ. Now, is there any basic conceptual distinction between the theory underlying the Bank Holding Company Act, the Public Utility Holding Company Act, and the pending legislation?

Mr. DONNER. I can only speak as a layman, of course, and I imagine the lawyers on the committee and my lawyer here might disagree with some of the things I said.

But, as a layman and a businessman, I do see certain distinctions.

In the first place, you made the point that in the Bank Holding Act they were dealing with activities extraneous to a banking function.

I don't consider that the ownership of a financing company that is concerned with the financing to the customers of the product of a company is an extraneous function.

Secondly, as I understand the Public Utility Holding Act, that was aimed at all public utilities that fit this situation.

Now, as I understand it here, the intent of this act is that it will be aimed at the automobile industry specifically with respect to not owning financing companies, but it is not aimed at the general question of whether finance companies are, or are not, extraneous factors, and it was at that latter point that I considered I was addressing myself to the fact that it was aimed at only a segment of industry without respect to whether or not that was a natural function.

Mr. MALETZ. Had it come to your attention that one of the major reasons for passage by the Congress in 1956 of the Bank Holding Company Act was that Congress believed that by virtue of the integration between the bank holding company, and nonbanking businesses, the nonbanking businesses—and am quoting directly from the report now of the House Banking Committee, the quote at page 16:

May thereby occupy a preferred position over that of their competitors in obtaining credit.

Mr. DONNER. I would have to rely on counsel in that area.

Mr. MALETZ. Now, is that not precisely the type of problem that is presented by virtue of the integration of General Motors and GMAC: namely, that GMAC may thereby occupy a preferred position over that of their competitors in obtaining credit?

Mr. POWER. I would like to comment on that point. If you are correct in that conclusion, Mr. Maletz, shouldn't this legislation be directed against any manufacturer that has a financing subsidiary, if you follow your statement to its logical conclusion?

I am directing myself now to the point of Mr. Maletz's argument here.

Mr. MALETZ. But we are talking about an industry where the largest automobile manufacturer controls the largest sales finance company in the country, and also controls the largest or second largest automobile insurance company in the country; an industry which is highly concentrated; an industry which, according to the Senate Antitrust Subcommittee, has followed a practice of administered pricing.

Now, in those circumstances, my question is this, Mr. Power:

Is there any conceptual distinction—

Mr. POWER. To me there is a very definite distinction.

Mr. MALETZ (continuing). Is there any conceptual distinction between the theory underlying passage of the Bank Holding Company Act of 1956 and this pending bill?



Mr. POWER. It was directed against an industry, as such. It was not specific against one bank. That is what you are doing in this business right here, this legislation.

The CHAIRMAN. This is being directed against the automobile industry.

Mr. POWER. That is right, but it also has been said specifically, you use General Motors as the example.

The CHAIRMAN. The Congress has the perfect right—

Mr. POWER. I am not questioning that. I am arguing the legality of this point.

The CHAIRMAN. The automobile industry dominated by your company is *sui generis*. General Motors controls the manufacturing—is it, 50 percent of all passenger cars?

Mr. DONNER. It is about 45 percent of passenger cars.

The CHAIRMAN. How much?

Mr. DONNER. About 45 percent of the passenger cars sold in this country.

The CHAIRMAN. And how much of all buses?

Mr. DONNER. I am not familiar with that percentage.

The CHAIRMAN. Maybe counsel is familiar.

What is the control of General Motors over the manufacturing of buses?

Mr. POWER. Very small in relation to the market, as we see it.

The CHAIRMAN. I beg your pardon?

Mr. POWER. Very small in relation to the market as we see it.

The CHAIRMAN. That is not the answer.

Mr. POWER. It is in litigation at the present time, and as far as we are concerned, we contend that the whole bus market is the market in buses, and that has to be determined before you can find out—

The CHAIRMAN. We can dig out the figures. We have them here.

But they are very consequential as far as the control of General Motors over bus manufacturing. But I will respect your objection that that is in the courts now.

But General Motors exercises and wields a tremendous power and potency in the automobile and automobile sales financing industry. Ford is about to do the same thing in establishing a subsidiary to finance its installment sales operations. Therefore, it is incumbent upon Congress to take action in the light of the history of these companies, in the light of the many actions that have been brought against General Motors as well as Ford not only by the Department of Justice but by the Federal Trade Commission.

And although Mr. Donner in his statement says that it is a discriminatory piece of legislation, in my estimation, there is nothing discriminatory about it at all.

It is directed to an industry, and we have a perfect right to legislate against any industry under the commerce clause of the Constitution.

Go ahead, Mr. Maletz.

Let counsel comment.

Mr. POWER. I merely wanted to comment that with respect to the Bank Holding Act, as Senator Lehman commented, he said:

I think it was important to indicate that the banks were incidental to the larger business of these concerns like Grace & Co. and some chemical companies and Gimbel Bros. It appears to me at least, and possibly to other members of

the committee, that the banks were incidental to the general and much larger business that they had. Whether this is right or wrong, I do not know, but I think that is the reason why this exemption.

Mr. MALETZ. What exception are you referring to?

Mr. POWER. The exemption Mr. Donner was referring to.

Mr. MALETZ. Which specifically? I have it before me.

Mr. POWER. The exemption which permits an industrial concern to have a bank affiliate.

Mr. MALETZ. I have the act here, and if you will examine it, I would appreciate your submitting for the record the specific exemption to which you are referring.

Mr. POWER. Yes, I will.

Mr. MALETZ. I think Mr. Donner's statement indicates that there was a specific decision by Congress on this matter. Are you familiar with that?

Mr. POWER. I am looking for Mr. Donner's statement on it.

Mr. CRABTREE. Page 26.

Mr. POWER. Mr. Donner's statement on page 26 refers first to the Clayton Act and the exemption in that:

Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Then he went on to refer to the Bank Holding Company Act, and said that in the specific exemption of financing affiliates:

Congress has consistently maintained that the formation of subsidiary corporations for conducting and implementing natural and legitimate financial activities relating to a corporation's business is appropriate and desirable.

That was what he was talking about.

Mr. MALETZ. Would you, at your leisure, Mr. Power, examine the Bank Holding Company Act and submit for the record a statement as to the specific exemption contained therein on which you rely?

Mr. POWER. We will.

(The information referred to appears on p. 826.)

Mr. MALETZ. Thank you.

Now you also indicated that the Bank Holding Company Act is different from the present legislation because the present legislation you state, singles out General Motors. Is that right?

Mr. POWER. That is correct.

Mr. MALETZ. Doesn't the pending bill, Mr. Donner, apply to all automobile manufacturers?

Mr. DONNER. I think I said the automobile——

Mr. POWER. That is right.

Mr. DONNER. I said, Mr. Maletz, I think in my answer that it was the automobile industry, and I think Mr. Power commented that the legislation seemed particularly directed at General Motors and Ford because of the fact that those were the two companies with the major affiliates. My statement only was directed to the automobile industry.

Mr. MALETZ. In other words, the bill would be directed at any automobile manufacturer.

Mr. DONNER. Yes.

Mr. MALETZ. That owned a subsidiary engaged in the financing and insurance of its motor vehicle products, isn't that correct?

Mr. DONNER. That is correct, and I made the statement because it seemed to me that as a businessman it was a little unusual if the manufacturers of other commodities, household appliances, say, that it was considered to be normal and legal for them to have those. That was what I was directing the statement at, and I didn't realize that it was getting into some of these other complications. It was a broad statement that I had in mind.

Mr. MALETZ. Has it come to your attention that under the Bank Holding Company Act, the only major divestment required was the severance of the Occidental Life Insurance Co. from Transamerica?

Mr. DONNER. No, I can't say it has.

Mr. MALETZ. Mr. Belgerano, the chairman of the board and president of Transamerica testified before the Senate Banking Committee opposing the bill on the ground that it was punitive and that it was principally designed to effect a severance of Occidental Life Insurance from Transamerica.

Had that come to your attention?

Mr. DONNER. No, sir.

Mr. MALETZ. I think you stated that the pending bill is unconstitutional, is that right, sir?

Mr. DONNER. I did on advice of counsel; yes, sir.

The CHAIRMAN. We will relieve you of that explanation and ask counsel to answer that.

Mr. DONNER. I don't know that I could answer that.

Mr. MALETZ. Was your attention directed to a detailed memorandum in the record of the Senate Antitrust Subcommittee concerning constitutionality of the pending legislation?

Mr. DONNER. Mine was not; no, sir.

Mr. MALETZ. How about you, Mr. Power?

Mr. POWER. No.

Mr. MALETZ. This is at page 472—

The CHAIRMAN. I don't think we have to belabor that. I don't think Mr. Donner is in a position to answer that, and counsel may have different opinions.

Mr. POWER. That is right.

The CHAIRMAN. It is the opinion of the author of the bill that it is constitutional, but I don't want to be dogmatic. If the bill is passed you will test the constitutionality of it.

Mr. POWER. That is right, that is the issue.

Mr. MALETZ. Mr. Donner, has it come to your attention that in the State of Ohio legislation has been adopted designed to prevent dealers in motor vehicles from acting as insurance agents?

Mr. DONNER. I am broadly familiar with that situation, yes, sir; not with the detailed legislation.

Mr. MALETZ. And has it also come to your attention that the purpose of this legislation was to prevent an unfair advantage in the placing of insurance and the licensing of persons who are not intending to do a general insurance business, but simply to supplement their primary business of selling automobiles.

Mr. DONNER. That specific language has not, but it sounds very reasonable as a reason for the bill.

Mr. MALETZ. At any time was your attention directed to the fact that the Supreme Court of Ohio held that the statute was not in contravention of the constitution of the State or of the Federal Constitution?

Mr. DONNER. No, I am not familiar with that litigation.

The CHAIRMAN. I want to tell General Motors counsel I was probably a little hasty on the question of constitutionality. I will be very glad for you to submit for the record, if you care to, any memorandum that you wish to on this question.

(The information referred to appears at p. 807.)

Mr. POWER. Fine, thank you, Mr. Chairman.

Mr. McCULLOCH. Mr. Chairman, I am glad you made that statement. I am sure there is no desire on the part of any of the members of this committee to enact a law if there is any real question of its constitutionality.

The CHAIRMAN. What I meant was I didn't want to have any fine-spun legal arguments at this hearing.

Mr. POWERS. Yes; that is right, I agree with you it is a question of opinion.

The CHAIRMAN. We would welcome your views on this question since you are an able and well-known attorney.

Mr. POWER. Fine. Thank you very much.

Mr. DONNER. You won't be getting me out of my depth then.

Mr. MALETZ. Mr. Donner, to leave the legal aspects of this problem, your statement indicates that the pending bill H.R. 71 has the sponsorship of certain sales finance companies who apparently wish, and I am quoting from your statement "to insulate themselves from the rigors of fair competition."

Would you tell the subcommittee, sir, what competition would be eliminated if GMAC were divorced from General Motors?

Mr. DONNER. Well, we don't know necessarily what would happen to GMAC if this legislation were passed. There is nothing in the legislation that requires divorcement—I mean divestiture. You can always liquidate a company.

The CHAIRMAN. Might I add there it is not the purpose of this legislation to hurt General Motors or to hurt General Motors Acceptance Corp. As a matter of fact, we want General Motors to prosper. We want General Motors Acceptance Corp. to prosper. We want them to prosper separately and distinct from one another.

That is the purpose of this bill and there is no reason why General Motors Acceptance Corp. couldn't operate on its own.

Mr. DONNER. I understand that, Mr. Chairman. I was just saying there is no requirement in the legislation for divestiture as opposed to liquidation. I think the only disagreement we have is that you think it should be divested, and I see nothing wrong in its continuance as a part of the General Motors distribution of cars overall.

The CHAIRMAN. You seem to imply in your statement that the only ones who are sponsoring this bill are members of the American Finance Conference. But there are quite a number of others who are sponsoring this legislation. Quite a number of Senators have indicated that they are in favor of this legislation; quite a few Members of Congress have so indicated; and the U.S. Department of Justice yesterday clearly indicated that it approves this bill. The Federal

Trade Commission's Chairman indicated that he personally approved this bill.

We have received communications from banks, insurance brokers, auto repair concerns and dealers throughout the country favoring this bill. So it is not under the sponsorship, as you put it, of only certain sales finance companies.

Mr. DONNER. Of course, when I wrote this the only printed material that I had seen was of the American Finance Conference, and when I wrote this statement, the expressed position of the Federal Trade Commission in 1959 was against it. I was not speaking of congressional sponsorship. I was speaking in the sense of sponsorship that came before Congress, and at that time the only sponsorship I had seen evidence of in printed material in particular, and that had been drawn to my attention, was the American Finance Conference material. I do not believe it was an unfair statement to make in that respect as of the time I wrote the statement.

The CHAIRMAN. I believe not. I just want to add this information for your purposes.

Mr. DONNER. Yes. I did not want you to feel I was trying to be unfair.

The CHAIRMAN. I understand that, Mr. Donner.

Mr. MALETZ. In the event H.R. 71 were amended, do you believe it likely that GMAC would be dissolved?

Mr. DONNER. I did not say that. I said "could be."

Mr. MALETZ. It could be dissolved now, could it not?

Mr. DONNER. Certainly. I do not know what would happen.

The CHAIRMAN. We do not want it dissolved. We want you to go on.

Mr. DONNER. I was merely pointing out that the legislation did not require a certain thing.

Mr. McCULLOCH. Since we are talking about our wants and our desires, I wish again to state my belief and my desire, which is that GMAC and the independent sales finance companies and the commercial banks make it their goal to provide financing to customers at the lowest possible rate consistent with the overall best interests of the country.

Mr. DONNER. In the years I have been connected with General Motors and GMAC, I think you have summed up what we have tried to do pretty well. I just happen to think that we can do that satisfactorily, legally, and in accordance with the antitrust laws as I understand them, as a part of General Motors, and that is why I am down here to try to explain that.

Mr. McCULLOCH. We hope the record will point the way for our part to that end.

Mr. MALETZ. Mr. Donner, assuming that there were divorcement of GMAC from General Motors, I wonder whether you would tell the subcommittee what competition would be eliminated?

Mr. DONNER. If it were divorced? That is purely speculative. I do not know what kind of a company it would be, how it would be operated, what its policies would be. I think that is getting way over into speculation.

What I am saying is it is competitive today. All I am saying is that I feel that it is competitive today, that it adds to the competition, that it adds to it in a perfectly reasonable legal way.

Now, there may be difference of opinion. I think that I should express mine.

Mr. MALETZ. If GMAC were divorced from General Motors, is it not a fact that GMAC would be free to compete with independent sales finance companies for the business of non-General Motors dealers?

Mr. DONNER. In the same way that it is technically free to do that now if that were determined to be its policy. I mean there is nothing in the law or the charter or anything else that prevents it now or would prevent it then. There again we are getting into speculation as to what the policies of the company would be at that time.

But the fundamental limitations are no different.

Mr. MALETZ. Now, if GMAC were divorced from General Motors, wouldn't independent sales finance companies have greater opportunity to obtain financing business from General Motors dealers?

Mr. DONNER. I do not know quite what you mean by that question of "greater opportunity." In what way, sir? I do not get what you mean by saying that they would have "greater opportunity" by the divorcement.

Mr. MALETZ. I take it that you begin with the premise that the General Motors dealer, is completely free to obtain his financing from any source he desires, is that right?

Mr. DONNER. Having talked to a number of dealers, I am completely convinced that they both are and they know they are. And certainly their actions, if you go into the field, indicate they know they are. That is one thing that has been very firmly established both by communications we have put out and by the acts of both the General Motors Corp. and the GMAC men in the field, and I am sure that if you could watch them operate for a while, you would see that.

Mr. MALETZ. Do you believe that General Motors' ownership of GMAC places other manufacturers who do not control finance subsidiaries at a competitive disadvantage?

Mr. DONNER. I do not see that it places them at any competitive disadvantage, because Ford has indicated that they are able to consider going out and having one of their own. American Motors has shown that they can go out and have one in the household appliance field and not have one in the car finance field. So that my feeling is that it is a decision that each company is free to make on its own if it is to its advantage.

Mr. MALETZ. I would like to repeat the question. Do you believe that General Motors' ownership of GMAC places other manufacturers who do not control finance subsidiaries at a competitive disadvantage?

Mr. DONNER. I am trying to sort out the question because I would have to answer it in two ways.

One is that what Ford Motor Co. is doing indicates that they feel that the ownership of a finance company has certain value to them, and I assume it has a value in the distribution of cars rather than purely a return on investment value.

On the other hand, other automobile companies have not elected to do it, and I am unwilling to say that their nonelection reflects any necessary disadvantage. I do not know.

Mr. MALETZ. Suppose that an automobile manufacturer does not have the resources to establish a financing subsidiary. Is it then at

a competitive disadvantage vis-a-vis General Motors with its financing subsidiary, GMAC?

Mr. DONNER. I am sorry, I cannot answer that question. I have no basis for knowing what their position might be, Mr. Maletz, and I say that very honestly.

Mr. MALETZ. Do you recall that Dr. Yntema, the vice president of the Ford Motor Co., testified before the Senate Antitrust Subcommittee at page 418, for example, and I quote:

We do not want to be and we do not want our dealers to be at a competitive disadvantage with General Motors, whose dealers and customers are serviced by GMAC.

Mr. DONNER. I remember a statement somewhat like that. That is his opinion, but that does not necessarily speak for other companies. It is his opinion and it is probably a great tribute to the efficiency with which GMAC is run.

The CHAIRMAN. I would like to ask you a question, Mr. Donner, turning to your statement on page 16, quoting Mr. Gossett, vice president and general counsel of Ford:

I think that if General Motors has violated the antitrust laws, if they have undue power, that some action ought to be taken, appropriate action.

Do you imply that if General Motors and General Motors Acceptance Corp. have done anything wrong, the remedy should be in the courts and that the Department of Justice should proceed?

Mr. DONNER. I am sorry, for some reason I cannot hear you right now. There is some noise there and I cannot hear.

The CHAIRMAN. I think part of your statement is to the effect that if General Motors and/or General Motors Acceptance Corp. or both have done anything wrong, that recourse should be had by the Department of Justice through the courts.

Is that not the tenor of part of your statement?

Mr. DONNER. That is right, sir.

The CHAIRMAN. I think the answer to that was given very succinctly yesterday by Judge Loevinger. He said, in effect, that the prosecution of an antitrust case, particularly against any company as large as General Motors, is costly and inordinately time consuming. The process is loaded with delays and roadblocks. After years of striving, he said, the Government secured a consent decree against General Motors and GMAC. He said that General Motors and GMAC were able to go on as they did before the suit was started. The public was unable to obtain the relief needed.

Now that being the case the public must try another forum, and that forum is the Congress. That in my opinion is not only the reply properly given by Judge Loevinger, it is the reply that I personally must give. The only thing we can do is have recourse to the Congress, because the other way does not provide the public what Judge Loevinger seemed to imply was justice.

Mr. DONNER. Well, I don't know if you want me to comment on that.

The CHAIRMAN. Yes, I would like to get your comment.

Mr. DONNER. Because a great deal of what you have said, I think, should be replied to by a lawyer. I was talking with our counsel this noon about this. He has not had a chance to read Judge Loevinger's testimony.

I had a chance to glance over it, and I think it is something he would like to give a good deal of study to. My reflection on that, reading it as a businessman, was that it was rather a reflection on our judicial processes in saying that you can't rely on them to administer the antitrust laws.

Now maybe that is a naive statement for me to make, but as I read Judge Loevinger's statement, he was saying that the judicial processes that have been set up to administer the antitrust laws, to which we and all other companies—

The CHAIRMAN. Mr. Donner, as I view this, your company stands before the bar of public opinion as having been convicted of a violation of the antitrust laws, convicted of a crime. The Supreme Court denied certiorari.

In addition, your company was brought before the Federal Trade Commission, and you were accused there of coercion, and other malpractices, and after 7 years of investigation and 4 years of litigation, the cease-and-desist order of the Federal Trade Commission was sustained.

Mr. DONNER. What case was that? I am sorry.

The CHAIRMAN. It was referred to—

Mr. DONNER. Counsel tells me it is the *Parts* case. I just wanted to be sure I knew what you were talking about.

The CHAIRMAN. In addition thereto, an indictment is now pending against your company in the courts and two civil antitrust suits have been filed against you. We, therefore, must strain all the statements that you make through the mesh of the company's past.

You have a past that is before you in a certain sense. You cannot exculpate yourself from these past wrongs by mere statements. Therefore, I cannot view with any degree of equanimity these protestations that are made as, for example, the claim that there will be more competition if you remain in the sales financing field, united with GMAC, that car dealers will be benefited, and that we would have almost an automotive paradise if conditions continue.

I cannot see that at all in the light of your past. For once bitten, twice shy.

Your company has bitten before, and we are shy now. That is how I have to view this. We are looking at this thing in an entirely different climate than was the case some years ago.

We are in a new era, facing new frontiers, and I think some of the executives of large companies and their counsel must wake up to that change.

Now forgive me for saying all this, but I firmly believe it, and I think it is properly a part of this record.

Mr. POWER. Mr. Chairman, may I just comment for a moment on that. That is one of the reasons why I said I would like an opportunity to review the testimony yesterday and to file a statement.

I think there are many things in that history that you are not aware of. For instance, it was not stated in that record, as I understand it, that there were 19 individual defendants indicted along with the General Motors Corp., General Motors Sales Corp., General Motors Acceptance Corp., and General Motors Acceptance Corp. of Indiana.

Of those 19, 2 were dismissed just before trial. After a 6 weeks' trial of the 17 individual defendants, they were all acquitted by the same jury, and, yet, they were the ones who were supposed to have



concocted and perpetrated the conspiracy. It was a very unusual verdict.

Now after that case, eight dealers——

The CHAIRMAN. Let me ask you: Was General Motors and General Motors Acceptance Corp. convicted in that case?

Mr. POWER. Yes, yes. Now my point is merely this: That the Attorney General said nothing, or, rather, the head of the Antitrust Division said nothing about the individuals who are the ones who were supposed to have committed the illegal acts. They were all acquitted by the jury.

Now subsequent to that, eight treble damage suits were filed by dealers. A good many others, I think, were probably contemplated, but eight were actually filed.

Of those eight, in three of them there were jury verdicts for the defendant. Of the other five, one was dismissed on summary judgment, another was dismissed at the close of the plaintiff's case after all the proof was in, another was determined to have been *res adjudicata*, but all eight cases were dismissed or we received verdicts, and there was not a single civil suit recovery.

Now there was mention made of the fact that this consent decree, there was some talk about that being sort of a, oh, a protection, almost, for General Motors.

Let me read you one section of the consent decree:

Jurisdiction of this cause——

The CHAIRMAN. This is in another case now?

Mr. POWER. This is the civil suit.

The CHAIRMAN. The civil case?

Mr. POWER. Yes.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties of this judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment or for the modification or termination of any of the provisions thereof or for the purpose of the enforcement of compliance therewith and punishment of violations thereof.

That is a very broad provision.

The CHAIRMAN. Let me ask you one question at that point.

Mr. POWER. Yes?

The CHAIRMAN. Has the Government the right to bring you before the court again under that consent decree and seek divorcement of General Motors Acceptance Corp. from General Motors?

Mr. POWER. They have the right to proceed against General Motors under that consent decree for contempt. Now just a moment——

The CHAIRMAN. I asked you a specific question.

Mr. POWER. I am not answering that question because I don't know what the law would be on the point, but I know this: That at the present time if we have any other violation that is outside the scope of it, they could proceed against us.

The CHAIRMAN. That is not the point. I simply asked you a specific question.

Mr. POWER. I don't know. I have just been told that the head of the Antitrust Division would not answer that question either.

The CHAIRMAN. You brought this——

Mr. POWER. No, no, now wait just a moment.

I was referring to the past. You are asking for something in the future. I cannot give you that kind of an opinion.

The CHAIRMAN. I said you have your past before you.

Mr. POWER. Well, I know; that is the one I am talking about.

The CHAIRMAN. And we always say, what is past is but prolog.

Mr. POWER. Well, I really also want to file something in connection with it and particularly this point of the witnesses and what was this kind of a decree, and I also would like to let this committee know what we did to enforce this consent decree.

Every single dealer that is appointed, even if a dealer were appointed tomorrow, gets a copy of this. He gets a letter from the general counsel interpreting this. We put those out back in 1952. We held meetings around the country with our people, and every new employee must read and sign.

The CHAIRMAN. I would certainly give you permission to submit anything you care to.

Mr. POWER. Thank you very much.

Mr. McCULLOCH. Mr. Chairman, before we leave this point, I have this comment to make.

First of all, I think it is a truism that no good citizen ever wishes to condone or to protect wrongdoing or illegal acts.

However, before indictment, there is usually some proof of wrongdoing or illegal acts. I was a bit disturbed yesterday, and I am more disturbed today, by the statements that the difficulty of prosecution, the difficulty of court action, calls for legislative action to correct situations.

I am inclined to believe that is not in accordance with the representative republican way with which we are accustomed.

Mr. DONNER. It was just to that statement that I was speaking, Mr. McCulloch, when I said I thought it was a reflection on the judicial processes to say that, and I would just like to comment that on these five actions that were mentioned, one of them the *GMAC* case, we have been operating under a very clear-cut, definite consent decree for 9 years under which we could, as I understand it, be cited for contempt any day that we did not live under it rigorously.

Under the Federal trade action which was in 1942, we have been acting for 19 years under a cease-and-desist order, which, as a layman, I understand is just as rigorous as a consent decree.

As to the other three actions, the actions which have been taken against us, they are in the courts. I am unwilling to admit we are guilty until the cases have been tried.

Mr. McCULLOCH. If there is proof of wrongdoing or of illegal acts, then you may expect that—

Mr. DONNER. Yes, but I was just reciting the present status of the situation, the number of years we have been acting under these cease-and-desist and consent decrees and the fact that these three other cases were in the very early stages of trial.

Mr. POWER. I would like to add to what Mr. Donner said. In the cease-and-desist order presently in effect, the *Parts* case, there was a check on compliance with that cease-and-desist order by the Federal Trade Commission 2 years ago and apparently we were in compliance.

Mr. DONNER. We don't want to say that we are unduly pure, but I am trying to make the point we are working very hard at it.

Mr. MALETZ. Mr. Chairman?

Mr. DONNER, do you believe that divorcement of GMAC from General Motors and its operations as an independent sales finance company would produce higher finance charges for both dealers and retail purchasers?

Mr. DONNER. What page was that on? Did I say that or are you saying I said that?

Mr. MALETZ. In effect, I believe you made a statement like that.

Mr. DONNER. You are saying I said that?

Mr. POWER. At what page is that?

Mr. MALETZ. Your summary at page 2:

The result could well be higher finance charges for both dealers and retail purchasers.

I believe you amplified on that in the body of your statement, Mr. Donner.

Mr. DONNER. I said "could well be."

Mr. MALETZ. "Could"? This is speculative?

Mr. DONNER. It is speculative.

Mr. MALETZ. Entirely speculative. It could be the divorcement of GMAC would result in lower finance charges to dealers?

Mr. DONNER. I very carefully chose the words "could well be" because I did not want to be in the position of indulging in certain conjecture.

Mr. MALETZ. In other words, it would be equally accurate, would it not in your judgment, to say that the result could well be lower finance charges for both dealers and retail purchasers; is that not right?

Mr. DONNER. I would be very surprised that it would be lower, when I see what the costs and rates of GMAC are.

Mr. MALETZ. Why would you be surprised if, upon divorcement, GMAC did, in fact, make its services available not only to General Motors dealers but to non-General Motors dealers as well?

Mr. DONNER. A lot of things could happen. It might operate differently; it might attempt to make more money.

Mr. MALETZ. I beg your pardon?

Mr. DONNER. I said it could operate differently. It could decide that it would attempt to make more money. Again, it is speculative, but I think the record of the Senate subcommittee in 1959 indicated that there was testimony by others to the effect that that could happen.

Mr. MALETZ. Now, let us assume, if you will, that GMAC were divorced, and let us assume further that GMAC then decided to compete for the business not only of General Motors dealers but of non-General Motors dealers.

Would the result then be higher or lower finance charges for dealers?

Mr. DONNER. I wouldn't know. I wouldn't know.

Mr. MALETZ. Is it not a fact that after CIT was divorced from its affiliation with Ford Motor Co., and after the contract of affiliation between Chrysler and Commercial Credit was terminated by the consent decrees, the cost of financing went down?

Mr. DONNER. I wouldn't be familiar with that. I am familiar with the fact that Mr. Yntema said that one reason that Ford wanted a retail credit company was that they were not getting as low rates; isn't that correct?

Mr. POWER. That is right; in certain areas.

Mr. DONNER. In certain areas.

One of the key words in both Mr. Stradella's statement and mine concerns the "nationwide" availability, and that was one of the considerations that Mr. Yntema had in mind, and that is one of the first considerations that is important when you were citing to Mr. Stradella this very large number of nonaffiliated sales finance company agencies. Those are not nation wide. Banks are not nationwide.

Mr. MALETZ. After termination of the affiliations between Ford, Chrysler, CIT, and Commercial Credit, did not CIT and Commercial Credit grow in size and service?

Mr. DONNER. Yes; but I don't know whether they grew with the industry or not. The industry was growing very rapidly.

Mr. MALETZ. They did grow in size and service, did they not?

Mr. DONNER. I said I don't know whether they grew faster or slower than the industry as a whole. That is an important point in this picture.

Mr. MALETZ. But did they actually grow?

Mr. DONNER. Oh, I assume so; yes. So did the country.

Mr. MALETZ. I take it that in a sales financing transaction it is the dealer and not the sales finance company which establishes with the automobile purchaser the amount of the time charge?

Mr. DONNER. Yes; just in the same way that the dealer and the customer establish the price, the net sales price, at which the car will be purchased by the customer after the trade-in allowance is made.

That is, it is handled entirely in the same manner.

Mr. MALETZ. Let me ask you this: Are GMAC rates to dealers lower than rates of competing sales finance companies?

Mr. DONNER. Oh, I think that would vary around the country, and I think the important thing in the competitive picture is what the bank rates are on dealer purchase.

Mr. MALETZ. Yes; but competing—

Mr. DONNER. I am not familiar enough to know the details. I will say this: That it is a very checkered picture around the country, this rate structure.

Mr. MALETZ. In other words, you are not prepared to say that across the country GMAC's rates are lower than rates of independent sales finance companies?

Mr. DONNER. I think I would be taking in too much territory.

Mr. MALETZ. Is it correct that in specific areas even though GMAC rates to General Motors dealers might in certain instances be lower than those of GMAC competitors, this does not mean necessarily that the savings experienced by the dealer are passed on to the retail car purchaser?

Mr. DONNER. Mr. Maletz, I would have to go through—and I have been thinking of this a long time because I thought you would ask me the question—

Mr. MALETZ. I beg your pardon?

Mr. DONNER. I said I have been thinking of this a long time because I thought you would ask me the question, it is a natural question. I would have to go through the whole complicated business of an automobile dealer who is selling new cars in a trading business, taking in used cars and reselling them in a trading business, and I don't think that you can say that the exact cost of the financing charge on an in-

voice has any relationship to the net cost of that financing to the consumer, because you don't know how much the dealer has traded away in the used car transaction or given implicitly as a discount on the new car. You probably know as everybody knows that people don't buy a new car for the stated cash delivered price, and the financing charge and the charge for the car is all part of that trading that the dealer does. And when I look at the amount of overall net profit that many dealers have, my feeling is the customer is getting the net benefit of the lower finance costs to GMAC, and that the cost that GMAC charges does have a real impact on the cost to the customer.

But if you have ever tried to follow one specific transaction through a dealer's statement until the final used car is traded away on the fourth trade, you have a little trouble sorting out individual transactions.

I am talking about the overall picture.

Mr. MALETZ. I think it might be well at this point, Mr. Donner, to indicate that the automobile dealer engages in a variety of functions: isn't that true?

Mr. DONNER. That is correct.

Mr. MALETZ. In other words, he is a retail seller of an automobile, is he not?

Mr. DONNER. That is the essential business.

Mr. MALETZ. Right.

Mr. DONNER. And most of these others are directly ancillary to it.

Mr. MALETZ. He also, in effect, lends money, does he not, in many cases?

Mr. DONNER. He may have his own finance company, yes, sir.

Mr. MALETZ. Or actually when he discounts his paper with GMAC he is in the business of extending credit to a purchaser?

Mr. DONNER. If he happens to do it on recourse, you might argue that.

Mr. MALETZ. Yes.

Mr. DONNER. If he does it on nonrecourse, which Mr. Stradella said was what—23 percent of the business, he isn't doing it.

Mr. MALETZ. If he sells his paper to a finance company on recourse, he is, in effect, is he not, engaged in extending credit to the retail purchaser?

Mr. DONNER. Without having the obligation of borrowing money directly himself.

Mr. MALETZ. In other words, what he does, as I understand it, is to obtain credit at wholesale from the finance company, and provide it at retail to the car purchaser; isn't that correct?

Mr. DONNER. Well, he gets his wholesale credit directly from a bank finance company, if he doesn't have the funds himself.

Mr. MALETZ. Yes.

Mr. DONNER. On the retail, if the customer comes in and wants to have the dealer handle the finance charge, he has the choice of all these alternatives. If he should choose he may be able to pick up the phone and make the deal certain. If he chooses to turn that over to a non-recourse company, on a nonrecourse financing transaction, I don't consider he has really extended credit.

Mr. MALETZ. In addition, the dealer in a great number of States, particularly General Motors dealers in 46 States, act as insurance agents, do they not?

Mr. DONNER. Oh, yes, on the cars that they sell.

Mr. MALETZ. And, beyond that, the dealer is in the repair business, is he not?

Mr. DONNER. Because it is necessary for the dealership to service the cars. These are very closely knit activities, if you analyze them, and they have grown up very naturally, in my opinion. We saw this begin to grow in the finance area in 1920 and 1921. We saw it begin to grow in the insurance area in the late 1930's.

Mr. MALETZ. Now, at page 5 of your statement you indicate the reasons for formation of GMAC. That event occurred in 1919, did it not?

Mr. DONNER. That is correct.

Mr. MALETZ. Was GMAC organized to acquire and keep within its control to the greatest extent possible the business of financing the sales of GM cars? Now, I am going back a long way now, sir.

Mr. DONNER. You have even gone back before my time and I didn't think you were going to be able to do that today. You are about 7 years before my time. I am sorry, I would hate to try to answer that question.

Mr. MALETZ. You would rather we skip that question?

Mr. DONNER. As far as my being able to answer it of personal knowledge, yes.

Mr. MALETZ. Did General Motors establish GMAC in 1919 as an instrument of sales policy?

Mr. DONNER. Those are some words. I want to be sure they aren't misunderstood.

If you mean as a step in the distribution of automobiles with respect to concerning themselves with the ability of the purchaser to get credit, the ability of the purchaser to get low-cost credit, and the ability of the purchasers goodwill to be maintained with General Motors in that process; yes, I think they did. But it was in that kind of a channel. If you use sales policy in the sense that GMAC was organized to utilize uneconomic means to facilitate the sale of cars, I would answer "No." So I just want to be sure we understand.

Mr. MALETZ. Yes, we will accept that.

Mr. DONNER. It is a tricky concept.

Mr. MALETZ. The definition of your term as to sales policy.

In 1925 did GMAC originate the practice of adding to the finance charge, a part to be collected from the purchaser and paid to the dealer?

Mr. DONNER. I wouldn't know that.

Mr. MALETZ. At any time has it come to your attention that prior to 1925 dealers generally made no profit from the financing of automobiles?

Mr. DONNER. No, I wouldn't know that, sir.

I think you would have to realize, though, that the percent of cars financed was very low in those days, also.

Mr. MALETZ. A few more questions, Mr. Donner.

These are questions that I have directed previously to Mr. Stradella.

Mr. DONNER. Yes.

Mr. MALETZ. And he suggested that these questions should more appropriately be addressed to you.

When General Motors sells automobiles to dealers, it requires the payment of cash at the factory, does it not?

Mr. DONNER. That is not quite correct. I hoped you were going to repeat those questions.

That is not quite correct.

The custom has been that the cash sale be picked up when the car is delivered to the dealer, whether the dealer pays for it through his own check, through a local bank, through a local financing company, or through GMAC. That time is regulated on a transit time basis, depending on the distance a car is from the factory. So it makes it sound a little stringent when you say at the factory.

Mr. MALETZ. Well, put it this way: The dealer must pay for the car when it reaches his premises, is that right?

Mr. DONNER. That is correct, and that has been the custom of the industry for—this I know from reading history—from 1900 or 1910.

Whether it is a good custom is another matter.

Mr. MALETZ. What is your opinion?

Mr. DONNER. My opinion is that it has a lot of merit from this standpoint: that it does cost money to carry cars. It costs varying amounts of money depending on how the dealers chooses to do it.

If we didn't do it this way, then we would have to include in the price of the car some allowance for the cost of carrying it for a period of time, and you, as a dealer, would be paying that whether you sold it the day you got it, whether you held it 10 days, 20 days, 30 days. And if you were an efficient dealer you would be carrying the cost indirectly of the inefficient dealers who might have 90 days stock. So I would say from the standpoint of equity among the dealers, it has very real meaning. Somebody has to pay the cost.

Mr. MALETZ. Now, beside providing retail installment credit by the purchase of dealers installment paper, GMAC also finances the wholesale purchase of GM products by its dealers, does it not?

Mr. DONNER. What products? I am not sure—

Mr. MALETZ. Automobiles.

Mr. DONNER. Automobiles?

Mr. MALETZ. Yes.

Mr. DONNER. That is, it finances them through wholesale, you mean?

Mr. MALETZ. Yes.

Mr. DONNER. Yes, that is what we were talking about.

Mr. MALETZ. Yes.

Now, there was testimony, and this is the precise question that was addressed to Mr. Stradella—

Mr. DONNER. Yes, I recall.

Mr. MALETZ. There was testimony before the Senate Antitrust Subcommittee that independent finance companies have experienced considerable difficulty in obtaining approval from General Motors to permit them to provide wholesale financing to General Motors car dealers.

Mr. DONNER. Do you remember what hearing that was, Mr. Maletz?

Mr. MALETZ. Yes.

Mr. DONNER. What year?

Mr. MALETZ. They are hearings in 1959, and I think they are hearings in 1955.

Mr. DONNER. Yes, because that has a little bearing on my comment.

Mr. MALETZ. In addition, it was testified before the Senate Antitrust Subcommittee that after a General Motors dealer has agreed to

use an independent finance company for wholesale financing, necessary approval by General Motors of the finance company and its financial paper is sometimes long delayed and difficult to obtain.

I would like further to read to you the statement on this point contained in the staff report of the Senate Antitrust Subcommittee.

Mr. DONNER. Was that the 1955 hearing?

Mr. MALETZ. At page 73.

Mr. DONNER. Were those the 1955 hearings?

Mr. MALETZ. This report was based on the 1955 hearings.

Mr. DONNER. That is the staff report, not a committee report?

Mr. MALETZ. Yes, the staff report.

Mr. DONNER. I just want to be clear on the year and the source.

Mr. MALETZ. In other words, there was testimony before the Senate Antitrust Subcommittee in 1955 and there was testimony before the Senate Antitrust Subcommittee in 1959 in connection with S. 838 that approval by General Motors of the independent finance company and its financial paper is sometimes long delayed and difficult to obtain.

The Senate staff report states specifically, and I quote, at page 73:

Witnesses pointed to the difficulty of independent finance companies in obtaining approval from General Motors to permit them to provide wholesale financing to General Motors car dealers, as evidence that General Motors uses its power and market position to assist GMAC to keep to itself the financing and insurance business of General Motors dealers. The record discloses that after a General Motors dealer has agreed to use an independent finance company for wholesale financing, necessary approval by General Motors of the finance and its financial paper is sometimes long delayed and difficult to obtain. One witness testified on this point—

Mr. DONNER. At what page are you?

Mr. MALETZ. Seventy-three. Do you follow me?

Mr. DONNER. I was listening. I had not picked it up yet.

Mr. MALETZ. I am reading from the first full paragraph, page 73.

Mr. DONNER. I have it now.

Mr. MALETZ. I am reading from the quote.

Mr. DONNER. I have it now.

Mr. MALETZ (reading):

"It was brought out here in the testimony yesterday that the practice in the automobile business is for the dealer to establish an arrangement with the finance company to pay for his automobiles at the factory for him and release the cars for shipment. The finance company provides that money which the dealers don't have or don't want to provide, and the dealer pays the finance company when he sells the automobiles off his floor.

"Now, we have arrangements with the various factories under which we establish our wholesale paying arrangements for the various dealers. With the other factories such as Ford, Chrysler, American Motors, Nash-Hudson, Studebaker-Packard, those arrangements work very smoothly.

"We set them up, complete them in each case with very little difficulty, and very little time is required. In the case of General Motors, it is very difficult.

"Their policies and procedures make it very difficult for our company to establish those arrangements in the first place. There is considerable delay involved.

"With the other factories we can complete an arrangement in a matter of 2 or 3 days, or not over a week. Sometimes in emergencies we can even get on the phone and complete them in a matter of hours. But in General Motors it requires about a minimum of 3 weeks, and in some cases it has required months to get the arrangements established and completed and get them to accept and approve it."

There is testimony in the record that an effort is made by GMAC to dissuade the dealer from using the services of the independent company while the ap-



proval of General Motors to the transaction is pending. If true, such activities are in violation of the spirit of the consent decree, if not of its direct prohibitions.

I wonder, Mr. Donner, if you would comment on this entire matter.

Mr. DONNER. Yes.

This was the procedure that was put in at about the time of the consent decree. The papers were worked out very carefully with the Department of Justice and the court, and, like all of these things, you get growing pains in the early stages.

I got into this myself at the time that these hearings were held. I found that there were some instances. They had nothing to do with GMAC's interest in the wholesale financing. I think they had to do with slow paperwork out at the division. We got into it.

We streamlined some of these things.

I have checked up very recently and I am told that there are not unfair, undue delays today. I am not saying that there were not at one time. My feeling is that they are the sort of thing you get when a new procedure is put in, particularly as you must recognize that arrangements like this are dependent upon the credit standing of the company extending the credit, and we had a little trouble getting those arrangements working.

I feel today, and since this statement was made, I feel that we have operated effectively in the field.

Mr. MALETZ. Well, now, this report was issued in 1956. There was testimony to very similar effect before the Senate Antitrust Subcommittee on February 26, 1959—

Mr. DONNER. Does that testimony indicate—

Mr. MALETZ. Almost 7 years after the entry of the consent decree.

Mr. DONNER. Does that testimony indicate when the occurrences happened? Is it at all clear when they happened?

Mr. MALETZ. Just a moment. This witness testified before the Senate in February 1959, and made reference to an incident some 10 years before.

Mr. DONNER. Yes.

Well, I had a feeling that we got this matter working, and the point I wanted to make with your committee is that it is the kind of difficulties you have when a procedure is put in from the operational standpoint, and certainly the people operating it out at the car divisions did not care one bit where the financing went.

But they certainly cared whether the credit was good or whether they were going to be hung with a bad debt.

And you know a few hundred cars can pile up a good-sized bad debt.

Mr. MALETZ. Now, another witness testified in 1959 with respect to instances in 1958.

Mr. POWER. How many witnesses testified in those hearings?

Mr. MALETZ. I beg your pardon?

Mr. POWER. I am asking how many witnesses testified.

Mr. MALETZ. Have you read the record?

Mr. POWER. Yes. I was here at those. There were very few cases. They were all exceptions, and we checked into them very carefully.

In the provisions for financing, we must follow the consent decree.

There is a different exhibit for banks and the different forms. We even have to get guarantees and financial statements and the like.

That is all provided for in the decree.

Now, in some instances you get a small company or one that is doing it for the first time, and they do not know how to go about it; or we have a man that is not too experienced at it.

You can have those things happen. But those were very much the exception.

Mr. DONNER. My recollection, Mr. Maletz, is in both these hearings that where we knew of the instances we ran them down.

Mr. POWER. That is right, we did.

Mr. DONNER. I have a recollection that in one instance it was a case where the dealer and the local bank had difficulty getting an agreement out there as to what the paperwork was.

All I want to reiterate is these are procedural difficulties.

I don't want to condone them or try to push them aside, but they had absolutely nothing to do with GMAC getting the wholesale financing. They had to do with something very simple, and that is that the car division, as I said before, did not want to be sitting there with a bad debt a few months later and find that it had let some dealers have a few hundred cars that there was no money to pay for.

Mr. MALETZ. No further questions, Mr. Chairman.

Mr. CRABTREE. Mr. Chairman.

Mr. ROGERS. Yes.

Mr. CRABTREE. I have one or two questions.

Mr. Donner, the way H.R. 71 is presently worded it provides in part:

That nothing herein shall prevent such corporation, when making sales of its motor vehicles at wholesale, from permitting the purchaser to pay for such motor vehicles within a reasonable time after purchase at no additional charge.

Now, assume a hypothetical situation, sir, that the bill becomes law and that GMAC is not divorced from General Motors, but goes into other lines of financing. But also that under this bill which would be entirely legal, GMAC finances GM wholesale operations for nothing.

In your opinion, would this give General Motors a competitive advantage over other automobile manufacturers?

Mr. DONNER. If GM or GMAC financed it for nothing?

Mr. CRABTREE. GMAC.

Mr. DONNER. I do not think that they would finance it for nothing whether they were independent or a subsidiary of General Motors. They would have no reason to finance it for nothing. But as I understand it, that would give General Motors the right to sell those cars on 90-day payment, and I was just going to remark on that, that the result would be that we probably would increase the price of a Chevrolet about \$30 if it was carried for 90 days, because it cost about \$10 a month to carry it, and that was the point to which I was directing my earlier remarks to Mr. Maletz, I think, or to Mr. McCulloch, I don't remember who now, in which I said the inefficient dealers would get an advantage, and the efficient dealers would pay the freight for the others, because we would have to put that in the costs of all cars.

Mr. CRABTREE. In that respect, sir, you anticipated my next question.

Mr. DONNER. I am sorry.

Mr. CRABTREE. You have already answered it. Now, just one or two other questions, sir.

This may be a little repetitious. Has the Department of Justice written General Motors concerning complaints that there have been violations of the consent decree, and if so, has General Motors furnished the Department of Justice with all the requested information?

Mr. DONNER. I think I will ask counsel to answer that.

Mr. POWER. We have not had any.

Mr. CRABTREE. You have not had any complaints?

Mr. DONNER. Counsel.

Mr. POWER. No; no communications to us.

Mr. CRABTREE. Yesterday we heard some of the representatives from the sales finance companies testify that they had made complaints to the Department of Justice, but they declined to furnish us with the names of the General Motors dealers who supposedly had been coerced by General Motors. Would you be willing for the independents to furnish to this committee the names of the General Motors dealers who have been coerced, in order that they could be called as witnesses?

Mr. POWER. I have no objection to anybody testifying here, but I would not myself feel that I would say that they were coerced. You are assuming they were or at least the charge has been made.

Mr. ROGERS. In other words, you do not want to name anybody that has been coerced?

Mr. POWER. No. Now, the point I want to make with you in this: For instance, the Department of Justice received complaints from an automobile manufacturer that certain of their dealers who were dual with General Motors were being coerced. Those complaints were investigated and found to be unsubstantiated.

Mr. DONNER. There were several, too.

Mr. POWER. Yes; and, incidentally, on that we ourselves checked it and found there was no coercion, and we did not go and talk to those dealers. We wrote and asked them for the information as to who did it, and that is the way we would do it in any situation.

You will find lots of times that statements are made just as happened in the GMAC case in South Bend, the one that was talked about earlier. Many witnesses, I would say 100 to 150, were called down there to South Bend. Some of them told us about it later. They never testified because they had said to a finance company that was trying to sell them their particular business, trying to get the business from the dealer, and they would be going in and talking to that dealer maybe week after week, and finally to get rid of him the dealer who wanted to finance with GMAC would say to him: "Well, you know better. I cannot do that. They would cancel my franchise."

That was not so at all, but he was trying to get rid of the man who was trying to sell him a service, and he got tired of talking to him. Those things all just washed out the window. There were a good many witnesses that were down there at South Bend that never testified, because they could not. That was not what they meant.

Mr. DONNER. As we get into this question of coercion, I cannot help but be a little confused reading the record of these hearings as to whether my job is to convince the committee that the dealers are not being coerced to use a service to the benefit of General Motors, or whether General Motors is doing a disservice to competition because its dealers are unwilling to leave the selling of GM cars because they have the value of GMAC. I have seen both these statements made in

hearings. I frankly am a little confused as to exactly what is troubling us here. Is it that we are coercing dealers to do something that is bad for them or are we furnishing something that is—I do not remember what the language was—that is “freezing” the dealer organization of the country. I do not think we can have it quite both ways.

Mr. ROGERS. There is a suggestion that with the magnitude of the GMAC and its cooperation with General Motors throughout the years you have a captive market.

Mr. DONNER. I would disagree with that, Mr. Chairman.

Mr. ROGERS. I have said that has been a suggestion made to this committee.

Mr. DONNER. Yes. Well, I wanted to disagree with that. That is the middle ground.

Mr. ROGERS. Sure.

Mr. DONNER. The middle ground interests me because, as I have said earlier, I have been out in the field. I have talked to dealers; they have talked to me, and my feeling is that if there is one area where a dealer is completely free and easy in his mind, it is what he does with his finance paper, whether he keeps it himself—and a lot of them have finance companies—whether he keeps it himself or sells it or whether he sells it to GMAC. I think the only interests the dealers do have is that they would like to have as much of that paper as possible go across their counter and not go to a direct-to-consumer finance agency.

Mr. ROGERS. I was just trying to point out many things that have been suggested to us, and one of the problems we have to deal with is, as you know, the magnitude and the extent of the financing.

Mr. DONNER. I was merely speaking to this question of coercion, which confuses me at times.

Mr. CRABTREE. With regard to the proposition of whether or not there has been coercion, I believe there is already in the record the fact that General Motors Acceptance Corp. wholesales more automobiles than it retails.

Mr. DONNER. I think that is very natural, because it is a great convenience to a dealer to handle its wholesale through one agency, whether it is the local bank or a local finance company or a national finance company or GMAC. On the other hand, it is very simple for a dealer to take his finance paper around and sell it to half a dozen agencies one by one. One is a matter of convenience, and I think it has been testified to by some of these sales finance companies that they make no money on their wholesale, anyway.

We do not happen to agree that GMAC makes no money.

Mr. CRABTREE. Just one final question, sir. This has regard to the Senate report on administered prices.

Mr. DONNER. Which hearing was that, Mr. Crabtree?

Mr. CRABTREE. I beg your pardon, sir?

Mr. DONNER. I was just interested to get the years straight.

Mr. CRABTREE. This is the report that was published November 1, 1958.

Mr. DONNER. I see, yes.

Mr. CRABTREE. This is my question, and I will first state a hypothetical situation, which I will not ask you to agree to; but this

report states in rather dogmatic terms that the problem in the automobile industry is the monopoly power which is possessed by General Motors. The report then goes on to suggest that the Department of Justice conducted a thorough investigation, and then considered bringing a section 2 monopoly case.

Now, my question is this: Assuming, for the sake of argument, this condition to be true, does this bill really go to the heart of the anti-trust situation, that is, to whatever dominance General Motors may have in the automobile industry?

MR. DONNER. I do not know whether I am "beating my wife" or not. I want to sort that one out. I would like you to make that talk to 40 of our divisional managers and get out of the room when you tell them we have got a monopoly, with the competition under which they are.

When you get into the question of whether it goes to the heart of the antitrust situation, I think I would rather let counsel comment if he wants to on the legal side of it. The business side is purely ify.

MR. POWER. I do not know where the heart is.

MR. DONNER. We certainly believe that the way we have to operate in the automobile industry, we are in a very competitive industry as I understand competition, and I will be glad to take any of the committee members out to the regions and field and branches and zones and see what goes on. It is a good, tough business, and I do not think that the record of the amount of business that the various companies hold in the industry indicates there is anything fixed, certain, or constant about the amount of business individual companies get, including, unfortunately, General Motors. We go down, too, at times.

To me that is competition. Maybe that is not a legal definition.

MR. CRABTREE. I have no further questions.

MR. MALETZ. Mr. Donner, I do not know whether these two questions should more appropriately be addressed to you or to Mr. Stradella, but if I may have you refer to Mr. Stradella's statement, at the bottom of page 9 and the top of page 10. He stated, and I quote:

Dealers can use GMAC wholesale facilities and, at the same time, give all or part of their retail financing to banks or other finance companies. Many dealers do exactly this.

MR. DONNER. As I understand the situation——

MR. MALETZ. Is it a fact that many dealers give all of their retail paper to other agencies?

MR. DONNER. That is my understanding. I do not want to answer that of direct knowledge, but it is my understanding that that is so.

MR. MALETZ. May I inquire of Mr. Stradella as to what percentage of General Motors dealers follow this procedure of giving all of their retail paper to banks or other financing companies?

MR. STRADELLA. I do not think I can answer that.

MR. MALETZ. What is the basis for saying that many dealers give banks and independent sales finance companies all——

MR. STRADELLA. All or part, I said.

MR. MALETZ. Of their retail paper.

MR. STRADELLA. All or part.

MR. MALETZ. You say, "Many dealers do exactly this," many dealers.

MR. STRADELLA. All or part.

Mr. MALETZ. Maybe I misunderstood you. You did not mean to imply that many General Motors dealers give all their retail financing to banks and independent sales financing companies?

Mr. STRADELLA. No, I did not mean to say that, all or part. What I meant to indicate was there was a great deal of split business between various financial concerns and ours.

Mr. MALETZ. Thank you very much.

Mr. ROGERS. Thank you, Mr. Donner, and thanks to you, Mr. Stradella, for coming before the committee and giving us your views. Thank you very much.

The committee will stand adjourned subject to the call of the Chair.

GENERAL MOTORS  
ACCEPTANCE CORPORATION

GENERAL MOTORS BUILDING

BROADWAY AT 57TH STREET

NEW YORK 19, N. Y.

BRANCHES  
THROUGHOUT  
THE WORLDEXECUTIVE OFFICES  
CABLE ADDRESS  
GENMOTAC

July 25, 1961

Mr. Herbert N. Maletz, Chief Counsel  
Antitrust Subcommittee of the Committee  
on The Judiciary  
United States House of Representatives  
Room 230  
House Office Building  
Washington, D. C.

Dear Mr. Maletz:

Based on our review of the transcript of the hearings on H. R. 71, held by the subcommittee on June 9, 1961, attached are fifteen (15) copies of supplemental information by General Motors Acceptance Corporation in response to requests made at that hearing relating to:

1. The Group Creditors Life Insurance and Group Creditors Disability Insurance.
2. GMAC's share of the Retail Instalment Market on vehicles sold by General Motors dealers.
3. The GMAC Borrowing Ratios and subordinated debt agreements.

This supplement is for the purpose of supplying the additional information and clarification that the transcript indicates was desired by the subcommittee from GMAC with regard to GMAC's activities in these three areas.

You will note that the supplement does not contain a revision of the percentages of the retail instalment market obtained by competing groups of financing

Mr. Herbert N. Maletz, Chief Counsel  
Antitrust Subcommittee of the Com-  
mittee on The Judiciary  
July 25, 1961  
Page 2

institutions contained on page 6 of the GMAC statement of June 9, 1961, based on an assumed separation of retail credit extended directly and retail credit extended through a dealer. While the transcript does not clearly reflect exactly what assumptions were intended to be made for this purpose, it appeared to be your position that only the 63% of the 46% retail financing which is done by banks through dealers and none of the 13% representing retail financing done by credit unions, small loan companies, etc., (on the assumption that all of this 13% represents direct retail financing) should be included in determining the relative shares of the retail financing market.

Such a computation can arithmetically be made from the figures already supplied. In fact, page 457 of the transcript contains your "very hurried" computation on this basis which is approximately correct except that as we pointed out in our letter of June 26, 1961 to you, the percent for the commercial banks should be the higher of the two percents stated for banks and other finance companies.

However, it is our opinion that using such percentages on this basis or using them to show a higher GMAC share of General Motors dealer retail contracts by indulging in further assumptions is unjustified and unrealistic. The assumptions on which such figures would be based would be artificial and the conclusions drawn would not reflect conditions as they exist.

Very truly yours,

*Aloysius F. Power*  
Aloysius F. Power  
General Counsel





SUPPLEMENTAL INFORMATION  
BY  
GENERAL MOTORS ACCEPTANCE CORPORATION  
IN RESPONSE TO REQUESTS MADE  
AT  
HEARING BEFORE THE  
ANTITRUST SUBCOMMITTEE  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
H.R. 71  
ON  
JUNE 9, 1961

567

Submitted July 24, 1961

SUPPLEMENTAL INFORMATION  
BY  
GENERAL MOTORS ACCEPTANCE CORPORATION  
ON H.R. 71

During the testimony on June 9, 1961 of Mr. Charles G. Stradella, chairman of General Motors Acceptance Corporation, the Subcommittee requested additional information. The following material is provided in response to the Subcommittee's request and also to furnish the Subcommittee with additional factual information on the operation of the GMAC group creditors insurance program as well as the GMAC participation in the instalment credit market.

(The information referred to at pp. 430 and 434 follows:)

1. GROUP CREDITORS LIFE INSURANCE  
GROUP CREDITORS DISABILITY INSURANCE

Reference: Official Transcript of Hearings  
June 9, 1961 -- Pages 377-410

Group Creditors Life Insurance

What GMAC Does in Handling Group Creditors Life Insurance

The Subcommittee expressed interest in the functions performed by GMAC in connection with insurance under the group creditors life insurance policy provided to GMAC by Prudential Insurance Company.

The dealer offers the insurance to the retail purchaser. In addition to arranging for the policy in the first instance, GMAC gives dealers considerable assistance in offering this type of insurance. The dealer is furnished with copies of a pamphlet specially prepared by GMAC entitled "Insurance On Your Life" which points out that life insurance coverage is available. GMAC provides the dealer with display easels which again call attention to the availability of life insurance coverage. Rate charts also are furnished to the dealer and retail salesmen so that they can easily quote the exact cost of the insurance to the customer. Retail conditional sales contracts are provided containing all descriptive clauses related to the insurance which are required under the regulations of the various states. All of this material, of which many thousand copies are required, is furnished at GMAC expense.

When a conditional sales contract which includes group creditors life insurance is offered to and purchased by GMAC, GMAC must:

1. Verify the correctness of the amount of the charge for life insurance.
2. Prepare and deliver to the purchaser a certificate of insurance.

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3. Where the contract has been signed by a co-purchaser or guarantor, verify that the proper party has been insured.
4. Maintain records so that the necessary information may be supplied to the Prudential Insurance Company.

A substantial percentage of GMAC accounts are prepaid by purchasers before the scheduled maturity. Where group creditors life insurance is included, the unearned portion of the premium must be calculated and refunded to the customer by GMAC.

Last year (1960) approximately 16,000 death claims were paid. On each claim, GMAC must obtain proof of death to meet the insurance company's requirements. Many of these claims require a considerable amount of effort in order to obtain the required information and complete the settlement before the paid-in-full contract and the unearned finance charge can be forwarded to the customer's estate.

The amount of the claim and pertinent details relating to the deceased purchaser's account are reported by the GMAC branch (accompanied by the proof of death) to the New York office of GMAC. This office reconciles the total amount of claims and submits them to Prudential for reimbursement. The central office must also maintain adequate records to make the proper monthly settlements with the Prudential.

As will be seen later, it has been the practice of GMAC to anticipate that these substantial expenses which GMAC incurs under the program would be reimbursed by way of dividends from the Prudential, to the extent consistent with the desire to maintain a low rate to the customer.

(The information referred to at pp. 465 and 447 follows:)

Insurance Policy and Certificate - Group Creditors Life Insurance

The group creditors life insurance protection made available to GMAC customers is based on a policy issued by the Prudential Insurance Company of America to GMAC with an effective date of April 1, 1948. This policy, which replaced similar coverage beginning October 1, 1941, is still in effect.

The policy provides for insurance payable to GMAC, in the event of the customer's death, in an amount equal to the unpaid balance under the contract, to be applied by GMAC to the customer's account.

Group creditors life insurance is normally offered to retail purchasers by dealers in connection with their instalment sales. The car purchaser is free to decide whether he should be so insured.

The group creditors life insurance made available by GMAC is believed to be more liberal than that offered by many sales finance companies with respect to both eligibility requirements and the extent of coverage. For example, there is no limitation on the age of the customer whereas some group creditors insurance policies have an age limitation of 65 years.

As requested by the Subcommittee (page 389), the policy and amendments thereto together with the letter from Prudential Insurance Company outlining the most recent rate change are attached as Exhibit 1.

GMAC prepares and delivers a certificate of insurance to each customer who elects group creditors life insurance. A copy of the certificate, which was also requested by the Subcommittee (page 389), is attached as Exhibit 2. This certificate, which contains a brief description of the insurance in force on the life of the insured debtor,

(The information referred to at p. 441 follows:)

is a statement of the Prudential Insurance Company signed by its president. The certificate, however, is printed, completed and delivered by GMAC at its own expense. The policy and certificate have been filed with and approved by the New York State Insurance Department and have also received approval by the insurance departments of other states where required.

Insurance Policy and Certificate - Group Creditors Disability Insurance

Group creditors disability insurance is also made available by GMAC under a Prudential Insurance Company policy. This coverage was initiated in 1960 to meet the growing demand for this type of protection. For the portion of the policy year starting October 1, 1960 through April 30, 1961 approximately 5% of the contracts purchased by GMAC have this coverage and earned premiums have totaled \$204,000. There has not yet been sufficient exposure under this policy to determine what the loss experience will be. GMAC performs substantially the same administrative functions for group creditors disability insurance as for group creditors life insurance.

As requested by the Subcommittee (page 407), there are attached as Exhibits 3 and 4 a copy of the group creditors disability insurance policy and a copy of the group creditors disability insurance certificate. The certificate is a statement of the Prudential Insurance Company signed by its president. The policy and certificate have been filed with and approved by the Insurance Department of the State of New Jersey and also have received approval by the insurance departments of other states where required.

Provision in Policy for Dividends

Group creditors insurance policies (as do other types of group

insurance policies) customarily contain a provision for an annual dividend or a premium refund to the lender-policyholder if the experience under the policy so permits.

Evidence that this is the general practice in the business is contained in the following excerpt from "Consumer Credit Insurance" (1957) by Dr. Daniel P. Kedzie, Assistant Professor of Insurance and Finance, Marquette University, and former Insurance Examiner, Wisconsin State Insurance Department, page 124:

"Premium Refunds and Dividends

Most group contracts of consumer credit life insurance provide that a premium refund shall accrue to the lender-policyholder based upon the experience of the company and the individual lender-policyholder as determined by the insurer's current formula. Mutual insurers call this refund a dividend. This refund or dividend may be paid in cash to the creditor or applied toward the payment of any premium at the policyholder's option."

The payment of dividends by Prudential to the lender-policyholder, GMAC, follows the usual practices of mutual insurance companies underwriting credit insurance.

GMAC has been informed that the Prudential Insurance Company's practices provide that policyholders with comparable experience receive comparable dividend treatment.

The disposal of dividends or experience refunds received by a policyholder is not regulated by law or the provisions of the policy. It has been the policy of GMAC to reduce charges to new customers as favorable experience is developed under the policy, since it would be impractical to identify the specific debtor group which developed a favorable experience.



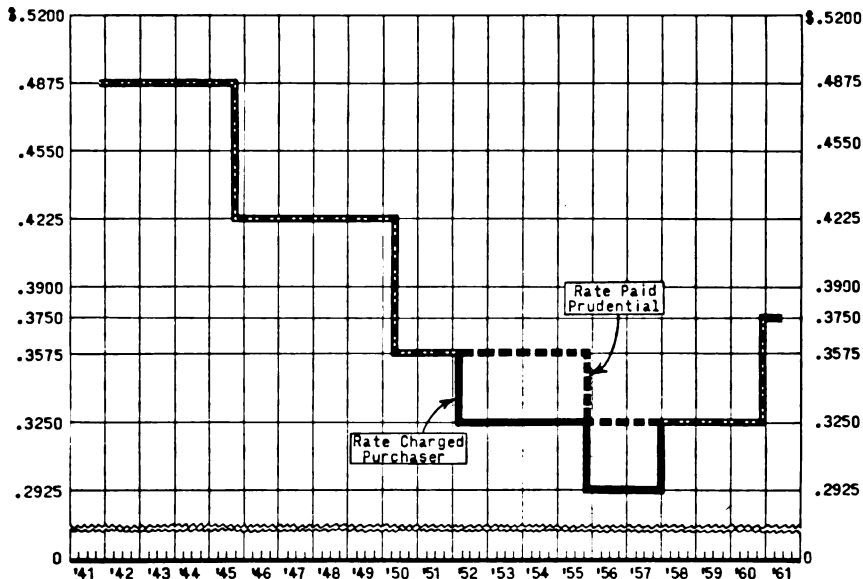
Premium Rates, Charges to the Customer and Loss Experience

Consistent with its desire to offer low cost creditors life insurance to the retail purchaser, GMAC has reduced the charge to the purchaser four times since inception of the program. It has not always received a simultaneous reduction in premium from Prudential. This is evidenced by the chart on the following page which shows the rate charged by GMAC to the purchaser as well as the premium rate paid by GMAC to Prudential from inception of the program to date.

• The chart shows that the rate charged the purchaser when the program was introduced in 1941 was \$0.4875 per \$100 of amount of contract per annum and that the four reductions brought the charge to a low of \$0.2925 per \$100 in 1955. This low charge continued until December 1957. From February 1, 1952 to November 30, 1957, GMAC charged the purchaser a rate approximately 10% below the premium paid to Prudential. In December 1957, the purchaser charge was raised to \$0.325 per \$100 (the actual premium rate of the insurance company) and again on November 1, 1960, to the present \$0.375 per \$100 when the premium was raised by Prudential.

GMAC GROUP CREDITORS LIFE INSURANCE

RATE CHARGED PURCHASER AND RATE PAID PRUDENTIAL  
(per \$100 of Amt. of Contract per Annum)



Note: The above rates are expressed in terms of \$100 of contract per annum, which is the method used by GMAC in stating its rate charged the purchaser.

Payments are made to Prudential based on a monthly rate per \$1,000 of outstandings. The present rate paid Prudential of \$0.577 per \$1,000 of outstandings per month converts to the GMAC purchaser rate of \$0.375 per \$100 of contract per annum, as follows:

Assume a \$1,200 contract for a one-year term.

The monthly balances outstanding (\$1,200 the 1st month, \$1,100 the 2nd month, etc.) total \$7,800. Based on a premium rate of \$0.577 per \$1,000 per month, the total premium paid Prudential over the term of the contract is \$4.50. This is equivalent to the purchaser rate of \$0.375 per \$100 of the amount of contract (\$4.50 divided by 12).

During the entire period since inception of the GMAC group creditors life insurance program, Prudential's loss ratio (direct loss payments related to earned premiums) on this policy has averaged 79.9%. For the most recent year, 1960, the loss ratio was 93.0%, or, in other words, purchasers received \$0.93 in direct benefits for each \$1.00 of premiums earned by Prudential. During 1960 a total of 16,000 claims were paid in the amount of \$17,440,000.

A review of the loss experience for the volume years beginning with 1952 indicates that in 1952 with the loss ratio in the area of 70%, charges to the customer were reduced by about 10% and again in 1955 by a further 10% since the loss ratio was continuing in that general area. As a result, by 1958 when the loss ratio approached 90%, it was considered advisable to increase the charge. When in 1959 and 1960 the loss ratio increased to 91% and 93% respectively, a further increase was put into effect. In both latter instances, the purpose was to improve the dividend to cover the estimated expenses. The following schedule records the foregoing:

<u>POLICY YEAR</u>	<u>LOSS RATIO %</u>	<u>RATE CHARGED BY GMAC TO CUSTOMER (PER \$100 OF AMOUNT OF CONTRACT PER ANNUM)</u>
1952	68.7	Reduced from \$0.3575 to \$0.3250 on 2-1-52
1953	68.2	No change
1954	69.3	No change
1955	69.1	Reduced from \$0.3250 to \$0.2925 on 10-1-55
1956	79.1	No change
1957	80.6	No change
1958	89.5	Increased from \$0.2925 to \$0.3250 on 12-1-58
1959	91.0	No change
1960	93.0	Increased from \$0.3250 to \$0.3750 on 11-1-60

Application of Dividends

During his testimony, Mr. Stradella, at the request of the chairman of the Subcommittee (Page 382), submitted figures as to dividends under group creditors life insurance made available by the Prudential Insurance Company of America, which total \$21,144,000 for the 19-year period, 1942-1960. The total amount of these dividends, however, did not accrue to the benefit of GMAC, due principally to the fact that, during a period of almost six years as indicated earlier, GMAC charged the customer less than the premium it paid Prudential. During that period, the GMAC charge to the customer was approximately 10% lower than Prudential's premium charge to GMAC. Premiums earned by Prudential on the GMAC policy since inception through 1960 amounted to \$137,103,000; however, related charges collected by GMAC from customers through 1960 totaled only \$129,921,000. This difference of \$7,182,000 must be deducted from the gross dividends of \$21,144,000 on the policy, making the net amount actually accruing to GMAC \$13,962,000 (not \$21,144,000).

Since inception of the group creditors life insurance program, GMAC has issued certificates to 24,060,000 customers. The net amount of \$13,962,000 accruing to GMAC, therefore, is equivalent to \$0.58 per customer.

It will be noted that the figure of \$13,962,000 represents approximately 10% of earned premiums before deducting any expenses incurred by GMAC. During the last three years, 1958-1960, in spite of the increases in premium rates, dividends have amounted to only 5.4% of earned premiums, again before deducting any expenses incurred by GMAC.

Most sales finance companies which have group life insurance

subsidiaries as well as other sales finance companies and banks expect coverage of their administrative expenses and, in addition, a profit. This is further indicated by the statement made by Mr. David D. Steere, president of Allied Finance Company, Dallas, Texas, before the Antitrust Subcommittee on June 30, 1961 (Page 1185).

A pamphlet issued on September 19, 1960 by the National Better Business Bureau, Inc., New York, referring to the 1957 results of three insurance companies specializing in creditors life insurance "including a wholly-owned subsidiary of one of the largest finance factors" stated that:

"Aggregate totals of these companies . . . indicate that only \$7.4 million or 22% was returned to the insuring public, out of premiums paid of \$33.5 million."

In contrast, GMAC has sought only reasonable reimbursement for expenses incurred for which it looks to the dividends paid by Prudential.

While GMAC does not maintain separate cost data on its group creditors insurance program, Prudential Insurance Company estimates that if it were to perform only certain of the functions now handled by GMAC, i.e., issue the certificates of insurance to purchasers, perform the subsequent bookkeeping operations and make payment of claims based on receipt from the GMAC branch offices of the claims with death certificates attached, it would incur an additional annual cost in the area of \$500,000 on the basis of current volume and related expense including salaries. Furthermore, GMAC would still incur expense since the assumption of these functions by Prudential would not eliminate all the functions now being performed by GMAC.

As a yardstick for reimbursement of expenses, something in the area of 10% of earned premiums is considered adequate. When reimbursement for expenses reaches or exceeds this level, it would be anticipated that the charge to the purchaser would be adjusted downward.

GMAC believes that this yardstick which has produced an average offset to expense of \$0.58 per certificate issued is most reasonable.

Availability of Similar Policy to Competitors and Practices of Competitors

The Prudential Insurance Company advises that the terms and conditions of the GMAC policy are similar to those of group creditors insurance policies which Prudential issues to some other sales finance companies that do not have their own life insurance subsidiaries, banks and small loan companies throughout the United States. Most major sales finance companies operate their own subsidiary life insurance companies.

Many insurance companies other than Prudential offer group creditors life insurance to instalment credit institutions. The "1960 Life Insurance Fact Book" published by the Institute of Life Insurance, New York, makes the following statement on Page 29:

"Written as term insurance, credit life policies are issued by life insurance companies through commercial banks, finance companies, credit unions and retailers, to cover time purchases, charge accounts and other financial obligations in the event of death. ...Group credit master policies numbered 47,000 ... at the end of 1959."

The practices of other instalment credit institutions with respect to charges are generally as follows:

Other Sales Finance Companies. As compared with the charge of \$0.375 per \$100 to the GMAC customer, it is known that a number of sales

finance companies charge as much as \$1.00 per \$100 amount of contract per annum. This fact was confirmed by the testimony of Mr. Steere, president of Allied Finance Company, on June 30, 1961 (Page 1178). The lowest customer charge by any non-affiliated sales finance company which has been brought to the attention of GMAC is \$0.435 per \$100. This is an exception. The lowest charge as a general practice is \$0.50 per \$100.

Commercial Banks. Generally, the banks charge either \$0.50 per \$100 or \$1.00 per \$100 per annum for creditors life insurance, except in California where the customer charge is the same as or almost as low as GMAC's. In a few areas there are also some banks that have no identifiable charge for life insurance as such, including its cost in the overall finance charge.

## 2. MARKET PARTICIPATION

Reference: Official Transcript of Hearings  
June 9, 1961-Pages 441-466 and 514-515

During Mr. Stradella's appearance before the Subcommittee, opinions were expressed by others that there is more than one automobile instalment credit market. These people maintained that there are two markets, one made up of business purchased from dealers by banks and sales finance companies and the other made up of business obtained directly from the purchaser by banks, credit unions and others. This was and is denied by GMAC. It is unrealistic and artificial to split up what is a most competitive single market.

On pages 1146 and 1147 of the transcript of hearings, Mr. R. L. Mullins, president of the Wolfe City National Bank of Wolfe City, Texas, a proponent of H.R. 71, related a story of how a local dealer took away from the bank a desirable piece of business which was to have been financed by the bank as a direct loan to the customer.

Perhaps an explanation of what actually happens in a credit purchase will provide a clearer understanding. At the time of sale the customer may obtain financing either through the dealer or directly through banks, credit unions and others. Most automobile dealers, though not all, prefer to handle the financing and insurance, if possible, for the additional possible income to them. They, therefore, try to get all the instalment credit business on all cars they sell. Sales finance companies, as well as banks offering a dealer plan, provide many services to assist dealers in their effort to prevent this instalment business from going to those financing sources that



deal only with the purchaser. This is logical since the dealer is their source of participation in the market.

Sales finance companies, including GMAC, provide the dealer with sales material, showroom display pieces, handout literature and conduct selling meetings with the dealer's sales organization -- all in an effort to assist him in developing the instalment business for himself and them.

One of the major efforts of GMAC to assist the dealer in getting this business is its national advertising program. Samples of GMAC advertisements are attached.

The dealers' principal competition in securing the financing is represented by those banks which deal directly with the public. They use several avenues of communication to do this -- newspaper advertisements, radio, television, handout literature included with monthly bank statements, etc. Samples of bank advertisements also are attached.

In competing for the total market, some banks promote directly with the public through advertising and other means as stated, and simultaneously promote a dealer plan in order to participate in that part of the market obtained by the dealers.

For example, the attached advertisement of a Detroit bank urges the reader to:

"...look into the advantages of a Manufacturers National Bank Auto Loan ... Arrange it yourself at any one of the 37 MNB offices in Detroit and the Metropolitan area, or tell your auto dealer. He'll make the arrangements for you."

Similarly, the attached advertisement of another Detroit bank advises:

"Your car loan can be completed at your Dealer's Office ... or see your nearby Bank of the Commonwealth Office."

That there is one market is rather conclusively evidenced by the fact that, where a given bank has both a dealer plan as well as a direct to customer plan, it is not unusual for it to offer the dealer a participation in the finance charge on the business created by the bank directly with the customer, provided he will accept the normal responsibility under the bank's dealer plan. Without doubt such a bank would agree that there is only one market -- the total of credit purchasers in its area.

Credit unions compete for this business through personal contact with employees in the institution where the credit union exists. They are constantly urging employees not only to participate in the credit union by making deposits therein, but also promoting employees to use the credit union where instalment credit is needed by them. They urge the employee not to go to the dealer or the banks. Certainly they do not distinguish between a prospective purchaser who intends to borrow directly from a bank and one who plans to go to the dealer for credit.

The facts are that banks, dealers, credit unions, etc., compete actively for every instalment credit purchase.

If this is not recognized by some of the American Finance Conference members, it may help to explain their declining participation in the business.

That the competitive market includes banks and credit unions is clearly indicated by the largest AFC member. In a speech at the

27th Annual Convention of the AFC in November 1960, Robert H. Van Aman, vice president of Associates Investment Company, said, according to Appendix B, page B-107 of the Transcript of Hearings:

"Before we conclude, let's talk about competition for a minute ..."

"The penetration of credit unions has been rapid -- they now hold 8.8 percent of all consumer instalment credit. Commercial banks, our greatest competitors, are constantly pushing for a bigger share of the consumer credit business -- and mutual savings banks, another 'privileged character' taxwise ..."

The form of the credit, on the other hand, is determined by the type of financing institution which wins the business. Banks offer two methods (direct loan by bank to purchaser or time sale contract with dealer); credit unions but one (direct loan to purchaser); sales finance companies but one (time sale contract with the dealer). The fact that the documentation varies as between banks or credit unions servicing the purchaser directly and sales finance companies or banks servicing the purchaser indirectly through the dealers in no way justifies the assertion that there is more than one market.

A statement was presented by Mr. Stradella showing the breakdown of the automobile instalment credit market, in which the GMAC participation was approximately 18% in 1960. Mr. Stradella also indicated that the GMAC participation in that portion of the total market consisting of instalment credit purchases from General Motors dealers was about 42% in 1960. The estimated breakdown of the credit purchases (new cars, used cars and total) from General Motors dealers between those financed by GMAC and by others is as follows:

	<u>New</u> <u>%</u>	<u>Used</u> <u>%</u>	<u>Total</u> <u>%</u>
Total GM Dealer Sales To Instalment Buyers	100	100	100
Financed by GMAC	46	40	42
Financed by Others Than GMAC	54	60	58

The above figures are based on the assumption that the purchases of new passenger cars from General Motors dealers on instalment credit represent the same percentage of their total sales as the overall percentage of time sales to total sales, 61%, as reported by the Federal Reserve Board for the year 1960. The Federal Reserve Board does not publish an estimated percentage of used cars sold on time; in order to develop the used car percentages, the assumption has been made that 65% of used cars are sold on time.

With regard to new cars purchased from General Motors dealers by use of instalment credit in 1960, an attempt has been made to estimate financing by banks, other sales finance companies, etc., shown above to be 54%. The 54% was divided somewhat as follows:

<u>Financed By</u>	
Commercial Banks	35%
Other Sales Finance Companies	6%
Credit Unions, Small Loan Companies, etc.	13%

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(The information referred to at p. 502 follows:)

Figures for earlier periods were provided to the Senate Subcommittee on Antitrust and Monopoly in 1958 as a part of the record of its hearings on Administered Prices and in 1959 as part of the record of its hearings on S. 838 and S. 839.

Another Subcommittee request (page 514) was for the dollar amount and the number of transactions represented by the estimated 42% of General Motors dealers' new and used car time sales financed by GMAC. GMAC financed 822,000 new GM cars and 865,000 used passenger cars or a total of 1,687,000 vehicles in 1960. This represented a dollar volume of \$3,141,000,000. Total GMAC retail volume for 1960, covering all products world-wide, totaled \$4,202,000,000 as stated by Mr. Stradella on page 514 of the official transcript.

(The information referred to at pp. 498 and 499 follows:)

### 3. BORROWINGS

Reference: Official Transcript of Hearings  
June 9, 1961 -- Pages 501-514

There was a request during Mr. Stradella's testimony for the GMAC borrowing ratio for each year since 1956 (page 503). The following tabulation sets forth the facts with respect to the ratio of total borrowings to equity capital and the ratio of borrowings (excluding subordinated notes) to capital funds for the years 1956-1960, as requested by the Subcommittee.

<u>At Dec. 31</u>	<u>Total Borrowings To Equity Capital (1)</u>	<u>Borrowings To Capital Funds (2)</u>
1956	15.1	5.5
1957	15.1	5.8
1958	12.1	4.8
1959	12.5	4.7
1960	12.2	4.8

"Total Borrowings" and "Borrowings" include accounts payable and accrued liabilities.

(1) "Total Borrowings" include subordinated notes;  
"Equity Capital" includes preferred stock, since all of it is owned by the single common stockholder,  
General Motors Corporation

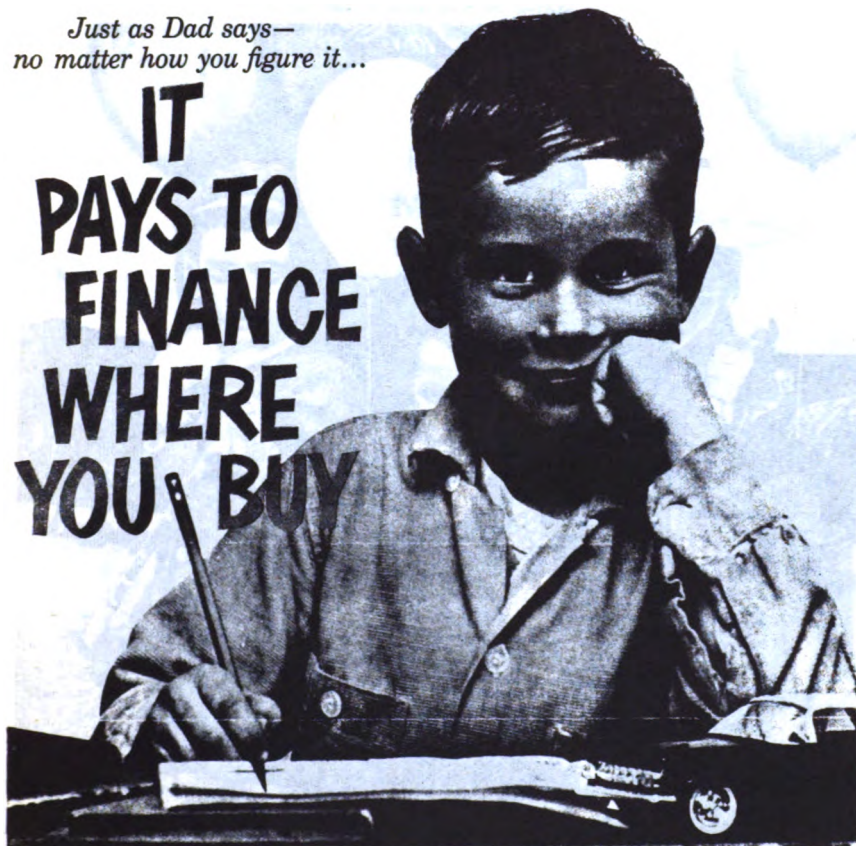
(2) "Borrowings" exclude subordinated notes;  
"Capital Funds" include subordinated notes.

The Subcommittee also requested a copy of the modified subordinated debt agreement of February 1960 (page 506). Attached as Exhibit 5 are copies of paragraph 6 (d) of the loan agreements for both the 5-3/4% Junior Subordinated Notes due June 1, 1981 and

the 5-1/2% Subordinated Notes due June 1, 1981, both sold in February 1960. This paragraph contains the GMAC covenants which govern the maximum amount of junior subordinated and senior subordinated debt which may be outstanding. The complete agreements were filed with the Securities & Exchange Commission as an attachment to the GMAC Form 8-K Report for February 1960. Similar limitations have been incorporated in all outstanding junior subordinated and senior subordinated loan agreements.

*Just as Dad says—  
no matter how you figure it...*

# IT PAYS TO FINANCE WHERE YOU BUY



Think about it. You take care of everything in one place, in one easy step. Nobody to see but your dealer. Convenient? Indeed it is! Practical, too—no one is more interested in satisfying you during every phase of your purchase and ownership.

Your General Motors dealer who uses GMAC can finance your car, your car insurance premiums and creditor life insurance for your family's added protection—all on terms to fit your budget and at reasonable cost.

It's good to know, too, that you can always

count on your dealer and GMAC for considerate treatment even if your circumstances change. GMAC has nearly 300 offices in the U.S. and Canada. If you move, your account can be transferred to the office nearest your new home. Should you need major repairs, tires, or parts, GMAC credit facilities are available to you as a valued customer.

So add it all up. You'll see it pays to finance where you buy—on the GMAC Plan. Since 1919, people have bought over 40 million cars this way!



#### WISE CAR BUYERS KNOW...

The best way to buy "on time" is to pay down as much as you comfortably can — then pay the balance as soon as you can.

ASK YOUR DEALER IN CHEVROLET • PONTIAC • OLDSMOBILE • BUICK • CADILLAC new cars and more... of all makes, also FORD • DELCO APPLIANCES





## KEEP THEM ALL TOGETHER

That's the best way to handle the situation when you're buying a car "on time" too. With the GMAC Plan, you can take care of all phases of your purchase in a single convenient transaction. You finance where you buy—with the dealer. There's not another person you have to see!

The General Motors dealer who uses GMAC can arrange to finance your car, your car insurance premiums, also creditor life insurance to give your family added protection—all on terms to fit your budget and at reasonable cost.

Circumstances sometimes change. If they do, you can depend on GMAC for friendly, considerate treatment. Should you move, another GMAC office will be conveniently located to continue serving you. There are more than 300 such offices in the U.S. and Canada. If you need tires, parts or major repairs, it is good to know that you have GMAC credit facilities available to finance them.

Look into this Plan that has helped people buy more than 40 million cars since 1919! See why—  
**IT PAYS TO FINANCE WHERE YOU BUY!**



**THRIFTY CAR BUYERS KNOW:**  
The best way to buy "on time" is to pay down as much as you comfortably can—then pay the balance as soon as you can.

ASK YOUR DEALER • CHEVROLET • PONTIAC • OLDSMOBILE • BUICK • CADILLAC new cars and used cars of all makes, also FORDAIRE • DELCO APPLIANCES

MNB-58-132

Detroit News, 10-15-58; 10-20-58; 10-27-58.

Detroit Times, 10-20-58; 10-27-58.

Detroit Free Press, 10-16-58; 10-21-58; 10-27-58



**The new '59 cars are beautiful—aren't they? Planning to buy one?**

If so, look into the advantages of a Manufacturers National Bank Auto Loan. MNB promises prompt, friendly service, convenient terms and favorable bank rates. Arrange it yourself at any one of the 37 MNB offices in Detroit and the Metropolitan area, or tell your auto dealer. He'll make the arrangements for you. And, remember, an MNB loan helps establish your bank credit, so important in many of your personal and business financial affairs.

## **MNB** MANUFACTURERS NATIONAL BANK

Member Federal Deposit Insurance Corporation

DETROIT • DEARBORN • HIGHLAND PARK • BLOOMFIELD • GROSE POINTE WOODS  
MILWAUKEE • NORTHVILLE • PLEASANT RIDGE • REDFORD • SOUTHFIELD • WARREN  
FARMINGTON TOWNSHIP

# AUTO LOANS



LIVE BETTER BY FAR

WITH A BRAND NEW CAR

## CONSULT US FIRST...AND SAVE!

Your Car Loan can be completed at your Dealer's Office...or see your nearby BANK of the COMMONWEALTH OFFICE

3% Quarterly on  
Medallion Savings Accounts

*BANK of the COMMONWEALTH AUTO LOAN PLAN*

MISS GOOD CHECK



MORTIMER SAYS:  
"EVERY MAN A KING  
AT MY BANK."

# BANK of the COMMONWEALTH

*26 Bank Offices open until 5 P.M. daily*



1415 Pioneer B. near E. Grand Street  
Open until 5 P.M. Mondays  
and Saturdays 10 A.M. to 5 P.M.

MONDAY THROUGH FRIDAY

MEMBER FEDERAL RESERVE SYSTEM  
AND FEDERAL DEPOSIT INSURANCE CORPORATION

Reprinted from The National Finance—April 6, 1937

GMAC EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
1	GMAC Group Creditors Life Insurance Policy with the Prudential Insurance Company of America
2	GMAC Group Creditors Life Insurance Certificate
3	GMAC Group Creditors Disability Insurance Policy
4	GMAC Group Creditors Disability Insurance Certificate
5	Modified GMAC Subordinated Debt Agreements

(The information referred to at p. 435 follows:)

## EXHIBIT 1



# The Prudential

## INSURANCE COMPANY OF AMERICA

A MUTUAL LIFE INSURANCE COMPANY  
(Herein called the Insurance Company)

In Consideration of the Application for this Policy and of the payment of premiums as stated herein, hereby insures the lives of certain debtors of

GENERAL MOTORS ACCEPTANCE CORPORATION

(Herein called the Creditor)

and agrees, subject to the terms and conditions of this Policy, that immediately upon receipt of due proof in writing of the death of any insured debtor, the Insurance Company will pay to the Creditor the amount for which the debtor is insured. Such amount shall be applied by the Creditor towards the discharge of the indebtedness of the debtor to the Creditor remaining unpaid at the death of the debtor, and payment by the Insurance Company to the Creditor shall completely discharge the Insurance Company's liability with respect to the amount so paid.

This Policy takes effect on the first day of April, 1948, which is the date of issue hereof, and policy anniversaries are deemed to occur on the first day of October of each year, beginning in 1949. The first policy month shall commence on the effective date of the Policy. Subsequent policy months shall commence on the first day of each calendar month. Premiums are payable by the Creditor in amounts determined as hereinafter provided. The first premium is due on the date the Policy takes effect, and subsequent premiums are, during the continuance of the Policy, due on the first day of each month thereafter.

This Policy is delivered in the State of New York and is governed by the laws of that jurisdiction.

The Sections set forth on the following pages are part of this Policy.

In Witness Whereof, The Prudential Insurance Company of America, at its Home Office in the City of Newark, New Jersey, has caused this Policy to be executed and attested this seventeenth day of March, 1948.

*Frederick K. Kohl* *Carol M. Shanks*

Secretary.

President.

Attest, *W. S. Horcott*

Group Creditors Insurance Policy No. GL-360  
Dividends Apportioned Annually

TERM INSURANCE

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## PLAN OF INSURANCE

Each debtor who, on or after the effective date of this Policy, becomes obligated under the terms of one of the classes of obligations set forth below shall be eligible for insurance hereunder from the date such obligation is incurred. Any person who succeeds any such debtor under and by Transfer of Equity accepted and approved by the Creditor, shall be eligible from the acceptance and approval of such transfer. Only one person shall be eligible with respect to any one obligation. Where the instrument evidencing the obligation is executed by two or more persons, the debtor eligible under the Policy shall be the person whose signature appears first, unless the Creditor, at the time the insurance becomes effective, designates one of the other persons executing such instrument as the debtor insured under the Policy and such designation is set forth in the Creditor's records. The classes of obligations under the terms of which debtors shall be eligible shall not include any obligations which are not repayable in periodic instalments or which are repayable in periodic instalments over a period exceeding three years.

Classes of obligations referred to above:

- (a) Individual purchases of any personal property sold by any dealers under instalment sale agreements purchased by the Creditor from said dealers, and
- (b) Obligations to any of said dealers for automobile accessories and/or repair work payable in instalments secured by chattel mortgages purchased by the Creditor from said dealers.

The amount of insurance on the life of each debtor insured hereunder shall be the amount of unpaid balance remaining, from time to time while the insurance is in force, to be paid by the debtor under the terms of such instalment sale agreements or obligations purchased by the Creditor, provided, however, that the amount of insurance on the life of any one debtor shall not at any time exceed \$2,500.

# DEBTORS INSURED

The life of each debtor who becomes eligible hereunder by executing an obligation which contains his express authorization for the insurance and the terms of which include an identifiable charge therefor, shall be insured hereunder from the date he becomes eligible, subject, however, to the provisions of the following paragraph of this section and to the condition that if the Insurance Company shall have given notice to the Creditor in accordance with the section of the Policy entitled "Exclusion of New Debtors Under Certain Conditions" no further addition to the number of debtors insured hereunder shall be made on or after the effective date of such notice.

If the number of new debtors becoming insured under this Policy during any period of twelve months is less than seventy-five per cent of the number of debtors becoming eligible during such period, the Insurance Company may require that any debtor thereafter becoming eligible for insurance furnish evidence of insurability satisfactory to the Insurance Company as a condition to his becoming insured. If such evidence is furnished, the debtor shall become insured from the date the Insurance Company determines such evidence to be satisfactory or from the date the debtor becomes eligible, whichever is later.

## EXCLUSION OF NEW DEBTORS UNDER CERTAIN CONDITIONS

If the number of new debtors becoming insured under the Policy during any period of twelve months is less than three hundred, or less than seventy-five per cent of the number of debtors becoming eligible during such period, the Insurance Company may, by giving written notice to the Creditor at least thirty-one days in advance, decline to insure all persons becoming indebted to the Creditor on or after the effective date of such notice.

## ASSOCIATED COMPANIES

For the purposes of this Policy, debtors of the following subsidiaries and affiliates of the Creditor shall be considered debtors of the Creditor:

- NONE -

## PAYMENT OF PREMIUMS

All premiums are payable by the Creditor at an office of the Insurance Company or to an authorized representative, in exchange for official receipts signed by the President or the Secretary and countersigned by the person receiving payment. Such premiums are due and payable monthly on the dates specified on the first page of this Policy. [Each monthly premium shall be equal to the product of the total amount of insurance in force on the due date of such premium and the monthly premium rate then in effect.] Instead of the method of computation of premiums above provided, premiums may be computed by any method mutually agreeable to the Creditor and the Insurance Company which produces approximately the same total amount.

## PREMIUM RATES

A monthly premium rate of sixty-five cents (\$0.65) per \$1,000 of insurance shall be in effect for all premiums falling due under this Policy, subject to the condition that upon the first policy anniversary, and upon each premium due date thereafter on which the then current premium rate has been in effect for at least twelve months, and upon any date that the extent of coverage is changed by amendment to this Policy, the Insurance Company may, by notifying the Creditor, change the rate upon which the amount of further premiums, including the one then due, shall be computed, provided, however, that if any change in rate effectuated by the Insurance Company pursuant to the foregoing results in an increase in rate, such increase shall not in any event apply to or affect the insurance in force with respect to the lives of debtors then insured hereunder.



**DEBTORS' CONTRIBUTIONS**

The contribution of each insured debtor towards the payment of premiums shall be an identifiable charge, not charged to eligible debtors not so insured, of an amount specified by the Creditor but not in excess of the premium for the insurance with respect to such debtor.

**GRACE IN PAYMENT OF PREMIUMS - TERMINATION OF POLICY**

A grace period of thirty-one days, without interest charge, will be allowed for the payment of each premium except the first. If any premium is not paid within the days of grace, this Policy shall terminate at the end of such grace period, except that if the Creditor makes written request in advance for termination of the Policy at the end of any policy month or during the grace period, the Policy shall terminate on the date requested.

If the Policy terminates during or at the end of the grace period, the Creditor shall be liable to the Insurance Company for the payment of a pro-rata premium for the time the Policy was in force during such grace period.

**TERMINATION OF INDIVIDUAL INSURANCE**

The insurance on any debtor shall automatically terminate at the earliest of the following dates:

- (a) the date on which the unpaid balance of the obligation under the instalment contract is fully paid;
- (b) the sixtieth day after continued default by the debtor in the payment of any instalment of the obligation when due, unless the property under the instalment contract is repossessed during such sixty day period;
- (c) in the event of repossession of the property under the instalment contract on or before said sixtieth day after default, then on the fifteenth day after such repossession, unless during such fifteen day period the debtor redeems the repossessed property and the Creditor reinstates the instalment contract;
- (d) the fifteenth day after the date provided in the instalment contract for payment of the final instalment thereunder;
- (e) termination of the Policy.

In the event of a Transfer of Equity prior to termination of insurance as above provided, the insurance on the life of the transferor shall terminate upon acceptance and approval by the Creditor of such transfer.

### AGE CORRECTION

In the event of the misstatement of the debtor's age there shall be an equitable adjustment of the premium.

### RECORDS - INFORMATION TO BE FURNISHED

The Creditor shall keep a record of the debtors insured containing, for each debtor, the essential particulars of the insurance including the date of birth of each debtor. The Creditor shall furnish periodically, on the Insurance Company's forms, such information relating to new debtors becoming insured, installments in default, changes in amounts of insurance, and terminations of insurance as may be required by the Insurance Company to administer the coverage. Upon request by the Insurance Company not more often than once a year, the Creditor shall furnish a statement to the Insurance Company of such relevant data concerning the debtors eligible for insurance hereunder as may reasonably have a bearing on the administration of the coverage and on the determination of the future premium rates. Such of the Creditor's records as have a bearing on the insurance shall be open for inspection by the Insurance Company at any reasonable time.

### DIVIDENDS

The portion, if any, of the divisible surplus of the Insurance Company accruing upon this Policy at each policy anniversary shall be determined annually by the Board of Directors of the Insurance Company and shall be credited to the Policy as a dividend on such anniversary, provided the Policy is continued in force by the payment of all premiums to such anniversary.

Any dividend under the Policy shall be (1) paid to the Creditor in cash, or at the option of the Creditor it may be (2) applied to the reduction of the premium then due, or (3) left to accumulate to the credit of the Creditor as long as the Policy remains in force, with compound interest at the rate authorized from time to time by the Board of Directors. The Creditor may withdraw dividend accumulations at any time, and if the Policy terminates any dividend accumulations then remaining with the Insurance Company shall be thereupon paid to the Creditor. The Insurance Company shall, however, have the right to defer the withdrawal or payment of any dividend accumulations for as long as six months, but not exceeding the period permitted by law.

### DEBTOR'S STATEMENT OF INSURANCE

The Insurance Company will issue to the Creditor, for delivery to each debtor insured hereunder within a reasonable period after the debtor's insurance becomes effective, a statement that the life of the debtor is insured under the provisions of this Policy and that any benefits payable hereunder by reason of his death shall be applied by the Creditor towards the discharge of his indebtedness to the Creditor. The statement shall also set forth the name of the Insurance Company, the number and type of the Policy, and a brief description of the coverage afforded by the Policy.

### INCONTESTABILITY

This Policy shall be incontestable, except for non-payment of premiums, after one year from its date of issue.

## THE CONTRACT

This Policy, together with the Application of the Creditor, a copy of which is attached hereto and made a part hereof, constitutes the entire contract between the parties. All statements made by the Creditor shall be deemed representations and not warranties, and no such statement shall avoid the insurance or be used in defense of a claim hereunder unless it is contained in the Application signed by the Creditor.

This Policy may be amended at any time, without the consent of the debtors insured hereunder, upon written request made by the Creditor and agreed to by the Insurance Company, but any such amendment shall be without prejudice to any claim arising prior to the date to which premiums have been paid. No agent is authorized to alter or amend this Policy, to waive any conditions or restrictions contained herein, to extend the time for paying a premium, or to bind the Insurance Company by making any promise or representation or by giving or receiving any information. No change in this Policy shall be valid unless evidenced by an endorsement hereon signed by the President, a Vice President, the Secretary, the Actuary, an Associate Actuary, an Assistant Secretary or an Assistant Actuary of the Insurance Company, or by an amendment hereto signed by the Creditor and by one of the aforesaid officers of the Insurance Company.

Wherever in this Policy a personal pronoun in the masculine gender is used or appears, it shall be taken to include the feminine also, unless the context clearly indicates the contrary.

**ENDORSEMENTS AND AMENDMENTS**

*Application is Hereby Made to*

# THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

*by*

GENERAL MOTORS ACCEPTANCE CORPORATION

whose Main Office Address is New York, N. Y.

for Group Policy No. GL-360

Said Group Policy is hereby approved and the terms thereof are hereby accepted. This Application is executed in duplicate, one counterpart being attached to said Policy and the other being returned to The Prudential Insurance Company of America, Newark, New Jersey.

It is agreed that this Application supersedes any previous application for the said Group Policy.

GENERAL MOTORS ACCEPTANCE CORPORATION  
(Full or Corporate Name of Applicant)

Dated at New York, N. Y. By E. L. Arner, Vice-President  
(Signature and Title)

On Mar. 23, 1948 Witness [Signature]  
(To be signed by Resident Agent where required by law)

# The Prudential



## Insurance Company of America

A Mutual Life Insurance Company  
HOME OFFICE, NEWARK, N.J.  
INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY

DEBTORS OF

GENERAL MOTORS ACCEPTANCE  
CORPORATION

Group Creditors

Insurance

Policy No. GL- 360

Dividends

Apportioned Annually

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
(Herein Called the Insurance Company)

RIDER FORM TO BE ATTACHED TO AND MADE A PART OF  
GROUP POLICY NO. GL-205

Effective ..... April 1, 1948 ....., the Policy is amended by the addition of  
the following:

For the purpose of determining the portion, if any, of the  
divisible surplus of the Insurance Company accruing upon this  
Policy, the financial experience of this Policy may be com-  
bined with that of Group Policy No. GL-205.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J., ..... April 5 ..... 48 ..... By..... *H. E. Dow* .....  
Assistant Actuary



THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Home Office, Newark, N. J.  
(HEREIN CALLED THE INSURANCE COMPANY)

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

At the request of - GENERAL MOTORS ACCEPTANCE CORPORATION -

herein called the Creditor, the Insurance Company and the Creditor hereby agree as follows:

AMENDMENT

The Policy is amended as of April 1, 1948, its effective date, to provide that General Motors Acceptance Corporation of Indiana, Inc., a subsidiary of the Creditor, is hereby deemed to be included under the section "Associated Companies" appearing on page 4 of the Policy.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Creditor and the Insurance Company have hereto affixed their respective signatures.

May 24, 1948, 1948

Witness *John D. John*

- GENERAL MOTORS ACCEPTANCE CORPORATION -

By *J. D. Jones* Vice President  
(Full or Corporate Name)  
(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J. April 5, 1948

By *H. E. Daw*  
(Signature and Title)





THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Home Office, Newark, N. J.  
(HEREIN CALLED THE INSURANCE COMPANY)

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

GENERAL MOTORS ACCEPTANCE CORPORATION

At the request of \_\_\_\_\_  
herein called the Creditor, the Insurance Company and the Creditor hereby agree as follows:

**AMENDMENT**

Effective April 1, 1948, the Policy is amended to provide that:

All premiums payable with respect to insurance on persons who become debtors on and after April 1, 1948 under instalment sales agreements or chattel mortgages purchased by the Creditor from dealers located in Canada, and all moneys payable by the Insurance Company with respect to claims on account of such insurance, shall be fully discharged and dischargeable by payment, dollar for dollar, in lawful money of Canada.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Creditor and the Insurance Company have hereto affixed their respective signatures.

Witness May 24, 1948, 1948

Witness

*Lois L. Johns*

GENERAL MOTORS ACCEPTANCE CORPORATION

(Print or Corporate Name)

By

*G. A. Ames* Vice President  
(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J.,

May 20

1948

By

*H. C. Dow*  
Assistant Secretary



THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Home Office, Newark, N. J.  
(HEREIN CALLED THE INSURANCE COMPANY)

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

At the request of - GENERAL MOTORS ACCEPTANCE CORPORATION -  
herein called the Creditor, the Insurance Company and the Creditor hereby agree as follows:

AMENDMENT

The Policy is amended to provide that as of its effective date April 1, 1948, the insert "1949" appearing in the second paragraph on the first page of the Policy is hereby deemed to be replaced by the insert 1948.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Creditor and the Insurance Company have hereto affixed their respective signatures.

November 24 19 48  
Witness Robert Stang

- GENERAL MOTORS ACCEPTANCE CORPORATION -  
(Full or Corporate Name)  
By G. A. Ames  
(Signature and Title)  
VICE PRESIDENT

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J., November 23, 19 48

By J. E. G. Jr.  
(Signature)  
Assistant Secretary

# THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

A MUTUAL LIFE INSURANCE COMPANY INCORPORATED BY THE STATE OF NEW JERSEY  
(HEREIN CALLED THE INSURANCE COMPANY)

## AMENDMENT TO GROUP POLICY No. GL-360

(to be attached to and made a part of the Policy)

- GENERAL MOTORS ACCEPTANCE CORPORATION -

At the request of

herein called the Creditor, the Insurance Company and the Creditor hereby agree as follows:

Effective April 1, 1950, the Policy is amended to provide that the last paragraph of the section "Plan of Insurance" on page 3 of the Policy is hereby deemed to be replaced by the following paragraph:

The amount of insurance on the life of each debtor insured hereunder shall be the amount of unpaid balance remaining, from time to time while the insurance is in force, to be paid by the debtor under the terms of such installment obligations purchased by the Creditor; provided, however, that the amount of insurance on the life of the debtor under any one such installment obligation purchased by the Creditor on or after April 1, 1950, shall not at any time exceed \$3,500, notwithstanding that the unpaid balance exceeds that amount; and provided, further, that the aggregate amount of insurance on the life of the same debtor under more than one installment obligation shall be limited to \$10,000, notwithstanding that the aggregate of the amount of insurance otherwise payable pursuant to each of said installment obligations exceeds \$10,000.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Creditor and the Insurance Company have hereto affixed their respective signatures.

May 3, 1950

Witness

*Robert H. Hays*

- GENERAL MOTORS ACCEPTANCE CORPORATION -

(Full or Corporate Name)

By

*J. W. Kingrey*  
Vice President

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N.J., May 2, 1950

By

*S. W. Kingrey*  
Authorized Secretary

NEW 19571-10-1-0

CPM

Printed in U. S. A. by Prudential Press

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

A MUTUAL LIFE INSURANCE COMPANY INCORPORATED BY THE STATE OF NEW JERSEY  
(HEREIN CALLED THE INSURANCE COMPANY)

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

At the request of - GENERAL MOTORS ACCEPTANCE CORPORATION -  
herein called the Creditor, the Insurance Company and the Creditor hereby agree as follows:

AMENDMENT OF PLAN OF INSURANCE

Effective April 1, 1950, the Policy is amended to provide that debtors indebted to the Creditor under the terms of a retail renewal of an obligation included in the classes of obligations contained in the section "Plan of Insurance" on page 3 of the Policy shall be eligible for insurance under the Policy from the effective date of the obligation under such retail renewal.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Creditor and the Insurance Company have hereto affixed their respective signatures.

June 21, 1950  
Witness Herbert H. [Signature] - By S. W. [Signature]  
(Print or Corporate Name)  
(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Newark, N. J., May 31, 1950 By S. W. [Signature]  
(Signature and Title)

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**  
a mutual life insurance company

**AMENDMENT TO GROUP POLICY No. GL-360**  
(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

Effective November 1, 1953 the Policy is amended to provide that General Motors Acceptance Corporation of Canada, Limited is hereby deemed to be included under the section "Associated Companies" on page 4 of the Policy.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

November 5, 1953  
Witness: *[Signature]*

- GENERAL MOTORS ACCEPTANCE CORPORATION -  
(Policy of Corporate Name of Policyholder)

By: *[Signature]* Vice President

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J., October 30, 1953

By: *[Signature]* Assistant Secretary

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
a mutual life insurance company

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

The Policy is amended to provide that:

1. Effective April 1, 1951, General Motors Acceptance Corporation of Indiana, Inc. is deleted from the section "Associated Companies" appearing on page 4 of the Policy, as amended.
2. Effective January 1, 1953, sub-paragraphs (b) and (c) appearing in the first paragraph of the section "Termination of Individual Insurance" on page 5 of the Policy are replaced by the following:
  - (b) the ninetieth day after continued default by the debtor in the payment of any instalment of the obligation when due, unless the property under the instalment contract is repossessed during such ninety day period;
  - (c) in the event of repossession of the property under the instalment contract on or before said ninetieth day after default, then on the fifteenth day after such repossession, unless during such fifteen day period the debtor redeems the repossessed property and the Creditor reinstates the instalment contract,

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

October 31, 1955  
Witness *J. H. [Signature]*

- GENERAL MOTORS ACCEPTANCE CORPORATION -  
(Full or Corporate Name of Policyholder)  
By *G. A. Ames*  
(Signature and Title)  
Executive Vice President

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Hewitt, W. J., October 20, 1955

By *Richard J. Bellman*  
Assistant Secretary

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**  
a mutual life insurance company

**AMENDMENT TO GROUP POLICY No. GE-360**  
(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

Effective March 1, 1977, the Policy is amended to provide that the last paragraph of the section "Plan of Insurance" on page 3 of the Policy is hereby deemed to be replaced by the following paragraph:

The amount of insurance on the life of each debtor insured hereunder shall be the amount of unpaid balance remaining, from time to time while the insurance is in force, to be paid by the debtor under the terms of such installment obligations purchased by the Creditor; provided, however, that the amount of insurance on the life of the debtor under any one such installment obligation purchased by the Creditor on or after March 1, 1977, shall not at any time exceed \$5,000, notwithstanding that the unpaid balance exceeds that amount; and provided, further, that the aggregate amount of insurance on the life of the same debtor under more than one installment obligation shall be limited to \$10,000, notwithstanding that the aggregate of the amount of insurance otherwise payable pursuant to each of said installment obligations exceeds \$10,000.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

Witness

Newark, N. J., April 4, 1977

- GENERAL MOTORS ACCEPTANCE CORPORATION -

(Full or Corporate Name of Policyholder)

By

Executive Vice President

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By

Authorized Signature

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

a mutual life insurance company

AMENDMENT TO GROUP POLICY No. GL-360

(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

Effective January 1, 1960, the Policy is amended to provide that the last paragraph of the section "PLAN OF INSURANCE" on page 3 of the Policy, as amended from time to time, is hereby replaced by the following paragraph:

The amount of insurance on the life of each debtor insured hereunder shall be the amount of unpaid balance remaining, from time to time while the insurance is in force, to be paid by the debtor under the terms of such instalment obligations purchased by the Creditor; provided, however, that the amount of insurance on the life of the debtor under any one such instalment obligation purchased by the Creditor on or after January 1, 1960 shall not at any time exceed \$7,500, notwithstanding that the unpaid balance exceeds that amount; and provided, further, that the aggregate amount of insurance on the life of the same debtor under more than one instalment obligation shall be limited to \$15,000, notwithstanding that the aggregate of the amount of insurance otherwise payable pursuant to each of said instalment obligations exceeds \$15,000.

In no event shall the replacement effected by this amendment operate to effect any change in the amount of insurance under the Policy on the life of a debtor under any one or more instalment obligations purchased by the Creditor prior to January 1, 1960.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

Dec 29, 1959  
Witness H. B. Schneider

- GENERAL MOTORS ACCEPTANCE CORPORATION -  
(Print or Stamp Name of Policyholder)  
By W. H. Samuel - Ex. V. P.  
(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Newark, N.J., December 21, 1959  
1959

By Richard J. Hellman  
Assistant Secretary



GL-360

Policyholder: GENERAL MOTORS ACCEPTANCE CORPORATION

Effective Date: March 17, 1960

## RIDER FORM MADE A PART OF GROUP POLICIES

GL-360 and GL-V360

issued by

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

(Herein Called The Insurance Company)

It is hereby agreed that the group policies specified above, collectively, shall be considered as a single group policy,

GT-360, for the purpose of determining and crediting the portion, if any, of the divisible surplus of the Insurance Company accruing upon said group policies.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

..... March 17, 1960

By

  
SecretaryAttest...  .....

The Policyholder has accepted this Rider this seventeenth day of March, 1960.


Witness

GC-3222



GENERAL MOTORS ACCEPTANCE CORPORATION

By

  
(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  
a mutual life insurance company

AMENDMENT TO GROUP POLICY No. GL-360  
(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

Effective August 1, 1960, the Policy is amended to provide that the following paragraph is added to the section "Associated Companies" appearing on page 4 of the Policy:

References throughout the Policy to debtors of the Creditor shall be deemed to include debtors of such subsidiaries and affiliates. Obligations to such debtors imposed on the Creditor by the Policy shall be satisfied by the subsidiary or affiliate, and, with respect to claims hereunder on account of coverage of such debtors, the Insurance Company shall discharge its obligations by making payment directly to the subsidiary or affiliate.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

October 7, 1960

- GENERAL MOTORS ACCEPTANCE CORPORATION -

(Full or Corporate Name of Policyholder)

Witness *[Signature]*

By *[Signature]* *[Signature]*

(Signature and Title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Newark, N.J. October 5, 1960

By *[Signature]* Assistant Actuary

STANLEY W. GINGERY  
Associate Actuary

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA  
HOME OFFICE, NEWARK, NEW JERSEY

Re: GL-360

July 27, 1960

Mr. Warren H. Wilson, Vice President  
General Motors Acceptance Corporation  
Broadway at 57th Street  
New York 19, New York

Dear Mr. Wilson:

A review of the current mortality experience and that of the immediately preceding years shows a significant upward trend. This trend and the recent level of experience indicates that the current monthly premium rate of \$.50 per \$1,000 of outstanding balance will no longer be adequate. We are, therefore, increasing the monthly premium rate of your Group Creditors life policy for the United States and Overseas Department business to \$.577 per \$1,000 of outstanding balance on new contracts. The new rate represents a basic insurance charge of \$.375 per \$100 of initial balance for a 12-month account, as contrasted with your present charge of \$.325.

The existing monthly premium rate of \$.50 per \$1,000 will continue to apply to the outstanding balance of those contracts written prior to the rate increase until they have been fully liquidated.

We understand that because of necessary administrative adjustments you may not be able to place the new rate in effect for contracts purchased in October, 1960 and, accordingly, this increase may first become effective for contracts purchased in November, 1960. Will you please advise us in this regard.

For your information, attached is a chart of factors based on the \$.577 outstanding balance rate for insurance charges from one (1) through sixty (60) months.

The rate for the Canadian business will continue at \$.55 per month per \$1,000 of outstanding balance.

Kind personal regards.

Sincerely,

*Stanley W. Gingery*  
Associate Actuary

SWG:RS

ILLUSTRATIVE CHARGES PER \$100 OF INITIAL INDEBTEDNESS

Based on Monthly Outstanding Balance Rate of \$.577 per \$1,000

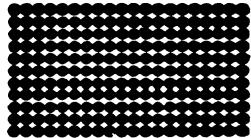
<u>Number of Monthly Installments</u>	<u>Total Cost for \$100 Obligation</u>	<u>Number of Monthly Installments</u>	<u>Total Cost for \$100 Obligation</u>
1	\$ .058	31	\$ .923
2	.087	32	.952
3	.115	33	.981
4	.144	34	1.010
5	.173	35	1.039
6	.202	36	1.067
7	.231	37	1.096
8	.260	38	1.125
9	.288	39	1.154
10	.317	40	1.183
11	.346	41	1.212
12	.375	42	1.241
13	.404	43	1.269
14	.433	44	1.298
15	.462	45	1.327
16	.490	46	1.356
17	.519	47	1.385
18	.548	48	1.414
19	.577	49	1.442
20	.606	50	1.471
21	.635	51	1.500
22	.664	52	1.529
23	.692	53	1.558
24	.721	54	1.587
25	.750	55	1.616
26	.779	56	1.644
27	.808	57	1.673
28	.837	58	1.702
29	.865	59	1.731
30	.894	60	1.760

(The information referred to at pp. 435 and 440 follows:)

## EXHIBIT 2

DATE  
LIFE INSURANCE CHARGE

NO.  
5



**This Certifies** that the life of the person named above, debtor under a certain installment obligation as dated above, has become insured under the provisions of Group Creditors Insurance Policy No. GL-389 issued by The Prudential Insurance Company of America, Newark, New Jersey, herein called the Prudential, to

**GENERAL MOTORS ACCEPTANCE CORPORATION**  
(Herein called the Policyholder)

Immediately upon receipt of due proof in writing of the death of the debtor prior to the termination of insurance on his life under the policy as described below, the Prudential will pay to the Policyholder, as the amount of insurance to be applied by the Policyholder towards payment of said installment obligation, an amount equal to the balance remaining to be paid under said installment obligation, except that the amount of insurance with respect to said installment obligation shall not exceed \$7,500 notwithstanding that the unpaid balance exceeds that amount, and except further that the aggregate amount of insurance on the life of the same debtor under more than one installment obligation shall be limited to \$15,000 notwithstanding that the aggregate of the amount of insurance otherwise payable under each of said installment obligations exceeds \$15,000. Payment by the Prudential to the Policyholder shall completely discharge the Prudential's liability with respect to the amount so paid.

The insurance on the life of the debtor shall automatically terminate at the earliest of the following dates: (1) the date on which the unpaid balance of said installment obligation is discharged, (2) the 90th day after continued default by the debtor in any payment when due under said installment obligation, unless the property is repossessed during such 90-day period, (3) in the event of repossession of said property on or before the 90th day after default, then the 15th day after such repossession, unless during such 15-day period the debtor redeems the repossessed property and said installment obligation is reinstated, (4) the 15th day after the date provided in said installment obligation for payment of the final installment thereunder, or (5) in the event that a person succeeds the debtor under and by a Transfer of Equity accepted and approved by the Policyholder, the date of such acceptance and approval.

In the event of prepayment of the unpaid balance of said installment obligation prior to the date provided therein for payment of the final installment thereunder, or upon the occurrence of the automatic termination events referred to in sub-divisions (2) and (3) of the preceding paragraph, the debtor will be credited by the Policyholder with a portion of the charge for the insurance on his life, computed in accordance with the principles of the "sum of digits" formula commonly known as the "Rule of 72," provided that no such refund or credit need be made if the amount thereof would be less than \$1.00.

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,**

Where a charge has been made to the debtor for insurance in excess of the aggregate limit set forth above, the debtor may be entitled to an adjustment as described in the credit insurance provisions of the installment obligation.

By

*Louis R. Managh*  
President

(The information referred to at p. 441 follows:)

EXHIBIT 3

# The Prudential Insurance Company of America

(INSURANCE COMPANY)

Policyholder: GENERAL MOTORS ACCEPTANCE CORPORATION

Group Policy Number  
GL- V360

Delivered In  
State of New Jersey

Policy Date  
March 17, 1960

Policy Anniversaries: October 1 of each year, beginning in 1960

The Prudential Insurance Company of America (herein called the Insurance Company) in consideration of the Application for this Policy and of the payment of premiums as stated herein, hereby agrees to pay benefits in accordance with and subject to the terms of this Policy.

This Policy takes effect on its Policy Date.

Premiums are payable by the Policyholder in amounts determined as hereinafter provided. The first premium is due on the Policy Date, and subsequent premiums are, during the continuance of this Policy, due on the first day of each month thereafter.

This Policy is delivered in the jurisdiction specified above and is governed by the laws thereof.

The Sections set forth on the following pages are part of this Policy.

In Witness Whereof, The Prudential Insurance Company of America has caused this Policy to be executed as of its Policy Date.

*Federick H. Galt*

Secretary

*Carroll M. Shanks*

President

GROUP CREDITORS DISABILITY INSURANCE POLICY  
DIVIDENDS APPROPRIATED ANNUALLY  
TERM INSURANCE

ORD 27884 Serial 05  
CD-100 ED 2-60

## PLAN OF INSURANCE

Each debtor who, on or after the effective date of this Policy, becomes obligated under the terms of one of the classes of obligations set forth below shall be eligible for coverage under this Policy from the date such obligation is incurred. Any person who succeeds any such debtor under and by Transfer of Equity accepted and approved by the Policyholder shall be eligible from the acceptance and approval of such transfer. Only one person shall be eligible with respect to any one obligation. When the instrument evidencing the obligation is executed by two or more persons, the debtor eligible for coverage under this Policy shall be the person whose signature appears first, unless, at the time the obligation is recorded in the records of the Policyholder the Policyholder indicates in such records that one of the other persons executing such instrument is the debtor covered under this Policy. The classes of obligations under the terms of which debtors shall be eligible shall not include: (a) any obligation which is not payable in periodic instalments, (b) any obligation which is payable in periodic instalments over a period exceeding 60 months or less than 6 months, or (c) any obligation under which the Monthly Disability Benefit hereinafter provided for would be less than \$25.00. Notwithstanding that the obligation incurred by the debtor is one under which the debtor would otherwise be eligible, the debtor shall not be eligible if on the date when the obligation is incurred he is sixty-five years of age or more or he is not "gainfully employed". The term "gainfully employed" means being actively engaged in any business or occupation for remuneration or profit for not less than 30 hours during each week.

## Classes of obligations referred to above:

- (a) Individual purchases of any personal property sold by any dealers (exclusive of dealers located in the State of New York) under instalment sale agreements purchased by the Policyholder from said dealers, and
- (b) Obligations to any of said dealers for automobile accessories and/or repair work payable in instalments secured by chattel mortgages or other security agreements purchased by the Policyholder from said dealers.

## DEBTORS COVERED

Each debtor who becomes eligible hereunder by executing an instalment obligation which contains an express authorization for the inclusion therein of an identifiable charge for coverage under this Policy shall be covered hereunder with respect to such obligation from the date he becomes eligible, subject, however, to the provisions of the following paragraph of this section and provided also that the Insurance Company shall not previously have given notice to the Policyholder in accordance with the section of this Policy entitled "Exclusion of New Debtors Under Certain Conditions" that no further addition to the number of debtors covered under this Policy shall be made on or after the effective date of such notice.

If the number of new debtors becoming covered under this Policy during any period of twelve months is less than seventy-five per cent of the number of debtors becoming eligible for coverage under this Policy during such period, the Insurance

DEBTORS COVERED (Continued)

Company may require that any debtor thereafter becoming eligible for coverage furnish evidence of insurability satisfactory to the Insurance Company as a condition to his becoming covered. If such evidence is furnished not later than thirty days after the date he becomes eligible for coverage under this Policy and such evidence is determined by the Insurance Company to be satisfactory, the debtor shall become covered hereunder from the date he becomes eligible. If such evidence is furnished later than thirty days after the date he becomes eligible for coverage and such evidence is determined by the Insurance Company to be satisfactory, the debtor shall become covered hereunder from the date such evidence is furnished to the Insurance Company.

TERMINATION OF COVERAGE

The coverage on any debtor with respect to an obligation shall automatically terminate on the earliest of the following dates:

- (a) the date on which the unpaid balance of the obligation under the instalment contract is discharged by prepayment thereof;
- (b) the ninetieth day after continued default by the debtor in the payment of any instalment of the obligation when due, unless the property under the instalment contract is repossessed during such ninety day period, or unless the debtor is then totally disabled on account of injury or sickness for which benefits are payable under this Policy;
- (c) in the event of repossession of the property under the instalment contract, then on the fifteenth day after such repossession, unless during such fifteen day period the debtor redeems the repossessed property and the Policyholder reinstates the instalment contract;
- (d) the date on which the final instalment of the debtor's obligation is payable pursuant to the original contract evidencing same or any executed renewal thereof or an extension of time granted by the Policyholder for payment of one or more instalments thereof;
- (e) termination of this Policy.

In the event that a debtor covered hereunder becomes a transferor under a Transfer of Equity prior to termination of coverage as above provided, the coverage on the transferor shall terminate on the date of execution by the Policyholder of such transfer.

Termination of coverage shall be without prejudice to any rights to benefits on account of total disability which commenced prior thereto.

BENEFIT PROVISIONS

Total Disability. - "Total Disability" means the complete inability of the debtor, due to sickness or accidental bodily injury or both, to perform any and all duties pertaining to his occupation, provided that in no event shall "total disability" exist for any purpose of this Policy during any period in which the debtor is actually engaged in his or any other gainful occupation.

ORD 27884

CD-300

ED 2-60



## BENEFIT PROVISIONS (Continued)

Elimination Period. - "Elimination Period", with respect to total disability of a debtor, means the first thirty consecutive days of any period of continuous total disability of the debtor.

Benefit Period. - "Benefit Period", with respect to an obligation, means a period commencing at the end of the Elimination Period and continuing so long as the debtor remains continuously totally disabled but not beyond the date on which the final instalment of the debtor's obligation is payable pursuant to the original contract evidencing same or any executed renewal thereof or an extension of time granted by the Policyholder for the payment of one or more instalments thereof.

Benefits. - If total disability of a debtor commences while the debtor is covered under this Policy with respect to an instalment obligation and it continues beyond the Elimination Period, then, commencing on the instalment due date next following expiration of the Elimination Period and thereafter monthly on instalment due dates during the Benefit Period applying to the debtor with respect to such obligation, the Insurance Company will pay to the Policyholder, subject to the provisions hereinafter stated, either (1) an amount equal to the Monthly Disability Benefit, determined as hereinafter provided, in the case where the entire monthly period ending with the instalment due date as of which such monthly benefit is payable hereunder is within the Benefit Period and the debtor was totally disabled during such entire monthly period, or (2) in any other case, an amount equal to a pro rata portion of the aforesaid Monthly Disability Benefit based on the number of days the debtor was totally disabled during that portion of the monthly period ending with the instalment due date as of which such monthly benefit is payable hereunder as is within the Benefit Period.

The sum of the disability benefits payable under this Policy with respect to an instalment obligation of a debtor shall not exceed \$5,000 and, in addition, if the same debtor incurs more than one instalment obligation, each of which includes an identifiable charge for coverage under this Policy, the aggregate of the disability benefits payable under this Policy with respect to all such obligations during any one period of continuous total disability of the debtor shall not exceed \$10,000. In no event, however, shall the sum of the disability benefits payable under this Policy with respect to an instalment obligation on and after the date the debtor attains sixty-five years of age exceed an amount equal to twelve times the applicable Monthly Disability Benefit.

If the terms of an instalment contract provide for payment of periodic instalments in other than equal monthly instalments, an instalment due date thereunder shall nevertheless be deemed, for the purposes of this Policy, to occur monthly on the same day of each month as the day of the month on which the final instalment is payable under the original contract evidencing the debtor's obligation or any renewal thereof.

The amount of the Monthly Disability Benefit payable with respect to an instalment obligation of a debtor shall be determined as follows, subject to the further provisions of this section:

BENEFIT PROVISIONS (Continued)

- (a) If the obligation is payable by the debtor in equal monthly instalments, the amount of the Monthly Disability Benefit shall be equal to the amount of a monthly instalment payment required by the terms of the original contract evidencing the debtor's instalment obligation or by the terms of any renewal thereof in effect at the time when the Monthly Disability Benefit becomes payable.
- (b) If the obligation is payable by the debtor in other than equal monthly instalments, the amount of the Monthly Disability Benefit shall be equal to the amount determined by dividing the total initial amount of the obligation by the duration, in months, from the date the obligation is incurred to the date on which the final instalment is payable pursuant to the original contract evidencing the debtor's obligation. However, in the event of a renewal of such an obligation, the amount of the Monthly Disability Benefit shall thereafter be equal to the amount determined by dividing the amount of the obligation remaining unpaid on the date of such renewal by the duration, in months, from the date of such renewal to the date on which the final instalment is payable pursuant to such renewal.

In no event, however, shall the Monthly Disability Benefit exceed \$300 with respect to any one obligation of a debtor, or an aggregate of \$450 with respect to all obligations of the same debtor if the debtor is covered hereunder with respect to more than one obligation.

No benefits shall be payable for any period of disability during which the debtor is not under the care of a licensed physician or surgeon other than himself.

In the event of an extension of time granted by the Policyholder for the payment of one or more instalments of a debtor's obligation thereunder, any benefits payable under this Policy for days of total disability, if any, of the debtor occurring immediately prior to the date on which the final instalment of the debtor's obligation is payable pursuant to such extension shall be reduced to the extent of benefits payable during the extension period.

Benefits paid by the Insurance Company to the Policyholder pursuant to the foregoing provisions shall be applied by the Policyholder, to the extent of such payments, in payment or reduction, as the case may be, of the amount of any instalment with respect to which each payment of benefits by the Insurance Company applies. If benefits paid to the Policyholder are not applied due to payment in full of the debtor's obligation or to the extent that a balance of such benefits remains unapplied thereafter, such benefits or any balance thereof shall be paid by the Policyholder to the debtor if living, otherwise to his estate. Payment by the Insurance Company to the Policyholder shall completely discharge the Insurance Company's liability with respect to the amount so paid.

## BENEFIT PROVISIONS (Continued)

Exclusions. - Benefits under this Policy are not payable with respect to an instalment obligation if total disability of the debtor (1) commences prior to the date on which the debtor becomes covered under this Policy with respect to such obligation, or (2) commences on or after said date if the total disability results from any disease contracted or bodily injury sustained prior to said date and the debtor was totally disabled as a result of such disease or injury at any time during the six months period immediately preceding said date, or (3) results from pregnancy or resulting childbirth, abortion or miscarriage or (4) results from an act of war, including, but not limited to, any war declared or undeclared, and armed aggression resisted by the armed forces of any country, combination of countries or international organisation, if such act occurs while the debtor is covered under this Policy with respect to such obligation.

## EXCLUSION OF NEW DEBTORS UNDER CERTAIN CONDITIONS

If the number of new debtors becoming covered under this Policy during any period of twelve months is less than three hundred or less than seventy-five per cent of the number of debtors becoming eligible during such period, the Insurance Company may, by giving written notice to the Policyholder at least thirty-one days in advance, decline to cover all persons becoming indebted to the Policyholder on or after the effective date of such notice.

## ASSOCIATED COMPANIES

For the purposes of this Policy, debtors of the following subsidiaries and affiliates of the Policyholder shall be considered debtors of the Policyholder -

GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA, LIMITED

## CLAIMS

Written notice of claim must be given to the Insurance Company within twenty days after the commencement of any Benefit Period for a total disability covered by this Policy or as soon thereafter as is reasonably possible. The Insurance Company, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs thereof. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this Policy as to proof of claim upon submitting, within the time fixed in this Policy for filing proofs of claim, written proof covering the occurrence, the character and the extent of the total disability for which claim is made.

ORD 27884  
CD-600

ED 2-60

CLAIMS (Continued)

Written proof of claim covered by this Policy must be furnished to the Insurance Company within ninety days after termination of the month or lesser period for which the Insurance Company is liable. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

The Insurance Company at its own expense shall have the right and opportunity to examine any debtor as to whose sickness or injury a claim is made when and as often as it may reasonably require during the pendency of such claim.

Subject to due written proof of claim, all accrued benefits under this Policy will be paid to the Policyholder monthly and any balance remaining unpaid upon termination of liability will be paid to the Policyholder immediately upon receipt of due written proof.

No action at law or in equity shall be brought on this Policy prior to the expiration of sixty days after written proof of claim has been furnished in accordance with the requirements of this Policy. No such action shall be brought after the expiration of three years after the time written proof of claim is required to be furnished.

PREMIUMS - CHARGES TO DEBTORS

All premiums are payable by the Policyholder at an office of the Insurance Company or to an authorized representative. Such premiums are due and payable on the dates specified on the first page of this Policy.

Each premium for the coverage under this Policy shall be an amount equal to the sum of the several premiums applicable to obligations of debtors covered hereunder on the due date of such premium, including such debtors as are then totally disabled on account of injury or sickness for which benefits are payable under this Policy. As of each premium due date the premium applicable to the obligation of each such covered debtor shall be computed on the basis of the applicable premium rate set forth in the table below, and, within the limit next hereinafter stated, the amount then owing under the debtor's obligation, subject to the right of the Insurance Company in accordance with the provisions below to change the rates at which the premiums for coverage hereunder shall be computed.

The limit referred to above with respect to an obligation shall be an amount equal to the lesser of (a) \$5,000 and (b) the product of \$300 and the period (in months and fractions thereof) for which benefits may be payable with respect to such obligations.

ORD 27884

CD-700

ED 2-60

## PREMIUMS - CHARGES TO DEBTORS (Continued)

Table of Monthly Premium Rates

<u>Number of Months In Term of Original Contract</u>	<u>Premium Rate per \$1,000 of Amount Owing under Obligation (with- in above limits)</u>	<u>Number of Months In Term of Original Contract</u>	<u>Premium Rate per \$1,000 of Amount Owing under Obligation (with- in above limits)</u>
6	\$0.995	34	\$0.505
7	0.969	35	0.498
8	0.939	36	0.491
9	0.908	37	0.486
10	0.878	38	0.480
11	0.848	39	0.474
12	0.820	40	0.469
13	0.793	41	0.465
14	0.769	42	0.460
15	0.745	43	0.455
16	0.724	44	0.450
17	0.703	45	0.446
18	0.685	46	0.442
19	0.668	47	0.438
20	0.651	48	0.434
21	0.635	49	0.431
22	0.621	50	0.428
23	0.608	51	0.424
24	0.596	52	0.420
25	0.584	53	0.417
26	0.573	54	0.415
27	0.563	55	0.411
28	0.553	56	0.408
29	0.544	57	0.405
30	0.536	58	0.403
31	0.527	59	0.400
32	0.519	60	0.398
33	0.513		

Whenever the Insurance Company is notified by the Policyholder that a debtor is covered with respect to more than one obligation, the premiums with respect to such debtor included in the premiums thereafter payable by the Policyholder shall be determined on a basis consistent with the foregoing, and any such premiums previously paid with respect to such debtor shall be adjusted accordingly, taking into account the aggregate benefit limit of \$5,000 with respect to one obligation, the aggregate benefit limit of \$10,000 during one continuous period of total disability with respect to more than one obligation, the \$300 maximum Monthly Disability Benefit with respect to one obligation, the \$450 maximum Monthly Disability Benefit with respect to more than one obligation, and the respective periods for which benefits may be payable with respect to such obligations. Whenever any such premium adjustment is made the Policyholder shall make an appropriate adjustment in the lump sum charge previously made to the debtor and the amount of such adjustment shall be paid or credited to the debtor.

ORD 27834

CD-800

ED 2-60

PREMIUMS - CHARGES TO DEBTORS (Continued)

Where the contract evidencing a debtor's obligation is modified by the terms of a renewal of the obligation or by an extension of time granted by the Policyholder for the payment of one or more instalments thereof, the premium thereafter applicable to the debtor with respect to such obligation shall be determined by the Insurance Company on an appropriate basis consistent with the foregoing.

In lieu of the method of determining premiums as set forth above, premiums may be computed by any other method mutually agreeable to the Policyholder and the Insurance Company which produces approximately the same total amount.

The Insurance Company shall have the right (a) on the first policy anniversary of this Policy and on any premium due date thereafter, and (b) on any date the extent of coverage under this Policy is changed by amendment to this Policy, to change the premium rates upon which the amount of further premiums, including the one then due, shall be computed, provided, however, that any change in rates effectuated by the Insurance Company pursuant to the foregoing shall not in any event apply to or affect the insurance in force with respect to obligations of debtors incurred prior thereto. In no event shall the Insurance Company exercise its right under (a) above to increase the premium rates in effect under this Policy prior to the end of the twelve month period commencing with the Policy Date. Furthermore, whenever the Insurance Company exercises its right under (a) above to increase the premium rates in effect under this Policy, the Insurance Company shall not again exercise such right under (a) above prior to the end of the twelve month period commencing with the last premium rate increase under (a) above.

The lump sum charge included in any obligation of a debtor for coverage under this Policy shall in no event exceed the aggregate of the premiums to be charged by the Insurance Company with respect to coverage in connection with such obligation, as computed at the time the charge to the debtor is determined, provided, however, that such charge shall in no event exceed the maximum charge permitted by any applicable law or authorized regulation promulgated pursuant thereto.

At the issuance of this Policy, the Insurance Company shall furnish the Policyholder with a schedule of maximum charges, determined as above provided, for the monthly premium rates then in effect under this Policy. In the event the premium rates applicable to coverage provided under this Policy are changed in accordance with the above provisions, the Insurance Company shall immediately thereafter furnish the Policyholder with a revised schedule of maximum charges, determined as above provided, for the new premium rates under this Policy.

In the event of prepayment in full of the debtor's obligation or upon the occurrence of the automatic termination events referred to in sub-divisions (b) and (c) under the section "Termination of Coverage", the premium applicable to the obligation of such debtor shall be excluded from the sum of the several premiums thereafter payable under this Policy by the Policyholder and the Policyholder shall pay or credit to the debtor a portion of the charge to the debtor for coverage under this Policy, computed in accordance with the principles of the "sum of digits" formula commonly known as the "Rule of 78", provided that no such payment or credit need be made if the amount thereof would be less than \$1.00.

## GRACE IN PAYMENT OF PREMIUMS - TERMINATION OF POLICY

A grace period of thirty-one days, without interest charge, will be allowed for the payment of each premium except the first. If any premium is not paid within the days of grace, this Policy will terminate at the end of the grace period, except that if the Policyholder makes written request in advance for termination of this Policy to take effect at any time from the end of the period for which premiums have been paid to the end of the grace period, this Policy will terminate on the date requested.

If this Policy terminates during or at the end of the grace period, the Policyholder shall be liable to the Insurance Company for the payment of a pro rata premium for the time this Policy was in force during such grace period.

## RECORDS - INFORMATION TO BE FURNISHED

The Policyholder shall keep a record of the debtors covered containing, for each debtor, the essential particulars of the coverage. The Policyholder shall furnish periodically, on the Insurance Company's forms, such information relating to the debtors covered hereunder as may be required by the Insurance Company to administer the coverage. Upon request by the Insurance Company not more often than once a year, the Policyholder shall furnish a statement to the Insurance Company of such relevant debtor eligibility data as may reasonably have a bearing on the administration of the coverage and on the determination of the future premium rates. Such of the Policyholder's records as have a bearing on the coverage shall be open for inspection by the Insurance Company at any reasonable time.

## DIVIDENDS

The portion, if any, of the divisible surplus of the Insurance Company allocable to this Policy at each policy anniversary shall be determined annually by the Board of Directors of the Insurance Company and shall be credited to this Policy as a dividend on such anniversary, provided this Policy is continued in force by the payment of all premiums to such anniversary.

Any dividend under this Policy shall be (1) paid to the Policyholder in cash, or at the option of the Policyholder it may be (2) applied to the reduction of the premium then due, or (3) left to accumulate to the credit of the Policyholder as long as this Policy remains in force, with compound interest at the rate authorized from time to time by the Board of Directors. The Policyholder may withdraw dividend accumulations at any time, and if this Policy terminates any dividend accumulations then remaining with the Insurance Company shall be thereupon paid to the Policyholder. The Insurance Company shall, however, have the right to defer the withdrawal or payment of any dividend accumulations for as long as six months, but not exceeding the period permitted by law.

## DEBTOR'S CERTIFICATE

The Insurance Company will issue to the Policyholder, for delivery to each debtor covered under this Policy, an individual certificate which shall state (a) the amount of charge to the debtor, if any, (b) the circumstances and formula under which any refunds of charges are payable by the Policyholder and (c) the essential features of the coverage to which the debtor is entitled, including a statement of the manner in which benefit payments as provided in this Policy shall be applied.

ORD 27884

CD-1000 ED 2-60

CANADIAN CURRENCY

All premiums with respect to coverage on persons who become debtors under installment obligations purchased by General Motors Acceptance Corporation of Canada, Limited from dealers located in Canada, and all moneys payable by the Insurance Company with respect to refunds or claims on account of such coverage, shall be fully discharged and dischargeable by payment, dollar for dollar, in lawful money of Canada.

THE CONTRACT

This Policy, together with the Application of the Policyholder, a copy of which is attached hereto and made a part hereof, constitutes the entire contract between the parties. All statements made by the Policyholder shall be deemed representations and not warranties, and no such statement shall avoid the insurance or reduce benefits under this Policy or be used in defense of a claim hereunder unless it is contained in the Application signed by the Policyholder.

This Policy may be amended at any time, without the consent of the debtors covered hereunder, upon written request made by the Policyholder and agreed to by the Insurance Company, but any such amendment shall be without prejudice to any claim arising prior to the date of the change. No Agent is authorized to alter or amend this Policy, to waive any conditions or restrictions contained herein, to extend the time for paying a premium, or to bind the Insurance Company by making any promise or representation or by giving or receiving any information. No change in this Policy shall be valid unless evidenced by an endorsement hereon signed by the President, a Vice-President, the Secretary, the Actuary, an Associate Actuary, an Assistant Secretary, or an Assistant Actuary of the Insurance Company, or by an amendment hereto signed by the Policyholder and by one of the aforesaid officers of the Insurance Company.

Wherever in this Policy a personal pronoun in the masculine gender is used or appears, it shall be taken to include the feminine also, unless the context clearly indicates the contrary.

ORD 27864  
CD-1100

ED 2-60



*Application is Hereby Made to*

## THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

by GENERAL MOTORS ACCEPTANCE CORPORATION

whose Main Office Address is NEW YORK, NEW YORK

for Group Policy No. GL-V360

Said Group Policy is hereby approved and the terms thereof are hereby accepted.

This Application is executed in duplicate, one counterpart being attached to said Policy and the other being returned to The Prudential Insurance Company of America.

It is agreed that this Application supersedes any previous application for the said Group Policy.

GENERAL MOTORS ACCEPTANCE CORPORATION  
(Full or Corporate Name of Applicant)

Dated at Newark N.J. By [Signature]  
(Signature and Title)

On Mar. 17, 1960 Witness [Signature]  
(To be signed by Resident Agent where required by law)

GL-360

Policyholder: GENERAL MOTORS ACCEPTANCE CORPORATION

Effective Date: March 17, 1960

RIDER FORM MADE A PART OF GROUP POLICIES

GL-360 and GL-V360

issued by

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

(Herein Called The Insurance Company)

It is hereby agreed that the group policies specified above, collectively, shall be considered as a single group policy,

GT-360 , for the purpose of determining and crediting the portion, if any, of the divisible surplus of the Insurance Company accruing upon said group policies.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

..... March 17 ....., 19 60

By

*Fredrick N. Earl*

Secretary

Attest... *W. M. M.* .....

The Policyholder has accepted this Rider this seventeenth day of March, 1960.

Witness

*Andrew M. Rollins*

GENERAL MOTORS ACCEPTANCE CORPORATION

By

*J. H. Hance*  
(Signature and Title)

GC-3222

## THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

a mutual life insurance company

## AMENDMENT TO GROUP POLICY No. GL-V360 .....

(to be attached to and made a part of the Policy)

The Policyholder and the Insurance Company hereby agree as follows:

Effective August 1, 1960, the Policy is amended to provide that the following paragraph is added to the section "Associated Companies" appearing on page CD-600 of the Policy:

References throughout the Policy to debtors of the Policyholder shall be deemed to include debtors of such subsidiaries and affiliates. Obligations to such debtors imposed on the Policyholder by the Policy shall be satisfied by the subsidiary or affiliate, and, with respect to claims hereunder on account of coverage of such debtors, the Insurance Company shall discharge its obligations by making payment directly to the subsidiary or affiliate.

It is agreed that such change or changes shall form a part of the Policy, but not unless both the Policyholder and the Insurance Company have hereto affixed their respective signatures.

October 7, 1960

Witness *[Signature]*

- GENERAL MOTORS ACCEPTANCE CORPORATION -

(Full or Corporate Name of Policyholder)

By *[Signature]* Vice Pres.

(Signature and title)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Newark, N. J., October 3, 1960

By *[Signature]* Assistant Secretary

GC-3718

Printed in U. S. A.

(The information referred to at p. 441 follows:)

EXHIBIT 4

EFFECTIVE DATE:

NO.:

CHARGE MADE TO DEBTOR: \$\_\_\_\_\_

THIS CERTIFIES that the person named herein, debtor under a certain instalment obligation as dated herein, is covered under the provisions of Group Creditors Disability Insurance Policy No. GL-V360 issued by The Prudential Insurance Company of America, Newark, New Jersey, herein called the Prudential, to GENERAL MOTORS ACCEPTANCE CORPORATION, herein called the Policyholder.

**TOTAL DISABILITY.**—"Total Disability" means the complete inability of the debtor, due to sickness or accidental bodily injury or both, to perform any and all duties pertaining to his occupation, provided that in no event shall "total disability" exist for any purpose of the coverage during any period in which the debtor is actually engaged in his or any other gainful occupation.

**ELIMINATION PERIOD.**—"Elimination Period", with respect to total disability of the debtor, means the first thirty consecutive days of any period of continuous total disability of the debtor.

**BENEFIT PERIOD.**—"Benefit Period", with respect to said obligation, means a period commencing at the end of the Elimination Period and continuing so long as the debtor remains continuously totally disabled but not beyond the date on which the final instalment of the debtor's obligation is payable pursuant to the original contract evidencing same or any executed renewal thereof or an extension of time granted by the Policyholder for the payment of one or more instalments thereof.

**BENEFITS.**—If total disability of the debtor commences prior to termination of the coverage as described below and such total disability continues beyond the Elimination Period, then, commencing on the instalment due date next following expiration of the Elimination Period and thereafter monthly on instalment due dates during the Benefit Period applying to the debtor with respect to said obligation, the Prudential will pay to the Policyholder, subject to the provisions hereinafter stated, either (1) an amount equal to the Monthly Disability Benefit, determined as hereinafter provided, in the case where the entire monthly period ending with the instalment due date as of which such monthly benefit is payable is within the Benefit Period and the debtor was totally disabled during such entire monthly period, or (2) in any other case, an amount equal to a pro rata portion of the aforesaid Monthly Disability Benefit based on the number of days the debtor was totally disabled during that portion of the monthly period ending with the instalment due date as of which such monthly benefit is payable as is within the Benefit Period.

The sum of the disability benefits payable with respect to said obligation shall not exceed \$5,000 and, in addition, if the debtor incurs more than one obligation, each of which includes an identifiable charge for coverage under the Policy, the aggregate of the disability benefits payable with respect to all such obligations during any one period of continuous total disability of the debtor shall not exceed \$10,000. In no event, however, shall the sum of the disability benefits payable with respect to an obligation on and after the date the debtor attains sixty-five years of age exceed an amount equal to twelve times the applicable Monthly Disability Benefit.

If the terms of an instalment contract provide for payment of periodic instalments in other than equal monthly instalments, an instalment due date thereunder shall nevertheless be deemed, for the purposes of the coverage, to occur monthly on the same day of each month as the day of the month on which the final instalment is payable under the original contract evidencing the debtor's obligation or any renewal thereof. The amount of the Monthly Disability Benefit payable with respect to said obligation shall be determined as follows, subject to the further provisions of this section:

- (a) If said obligation is payable in equal monthly instalments, the amount of the Monthly Disability Benefit shall be equal to the amount of a monthly instalment payment required by the terms of the original contract evidencing said obligation or by the terms of any renewal thereof in effect at the time when the Monthly Disability Benefit becomes payable.
- (b) If said obligation is payable in other than equal monthly instalments, the amount of the Monthly Disability Benefit shall be equal to the amount determined by dividing the total initial amount of said obligation by the duration, in months, from the date the obligation is incurred to the date on which the final instalment is payable pursuant to the original contract evidencing said obligation. However, in the event of a renewal of said obligation, the amount of the Monthly Disability Benefit shall thereafter be equal to the amount determined by dividing the amount of the obligation remaining unpaid on the date of such renewal by the duration, in months, from the date of such renewal to the date on which the final instalment is payable pursuant to such renewal.

In no event, however, shall the Monthly Disability Benefit exceed \$300 with respect to any one obligation of a debtor, or an aggregate of \$450 with respect to all obligations of the same debtor if the debtor is covered under the Policy with respect to more than one obligation.

No benefits shall be payable for any period of disability during which the debtor is not under the care of a licensed physician or surgeon other than himself.

In the event of an extension of time granted by the Policyholder for the payment of one or more instalments of said obligation, any benefits payable for days of total disability, if any, of the debtor occurring immediately prior to the date on which the final instalment of the debtor's obligation is payable pursuant to such extension shall be reduced to the extent of benefits payable during the extension period.

Benefits paid by the Prudential to the Policyholder pursuant to the foregoing provisions shall be applied by the Policyholder, to the extent of such payments, in payment or reduction, as the case may be, of the amount of any instalment with respect to which each payment of benefits by the Prudential applies. If benefits paid to the Policyholder are not applied due to payment in full of said obligation or to the extent that a balance of such benefits remains unapplied thereafter, such benefits or any balance thereof shall be paid by the Policyholder to the debtor if living, otherwise to his estate. Payment by the Prudential to the Policyholder shall completely discharge the Insurance Company's liability with respect to the amount so paid.

**EXCLUSIONS.**—Benefits are not payable with respect to said obligation if total disability of the debtor (1) commences prior to the date on which the debtor becomes covered with respect to said obligation, or (2) commences on or after said date if the total disability results from any disease contracted or bodily injury sustained prior to said date and the debtor was totally disabled as a result of such disease or injury at any time during the six months period immediately preceding said date, or (3) results from pregnancy or resulting childbirth, abortion or miscarriage or (4) results from an act of war, including, but not limited to, any war declared or undeclared, and armed aggression resisted by the armed forces of any country, combination of countries or international organization, if such act occurs while the debtor is covered with respect to said obligation.

**CLAIMS.**—Written notice of claim must be given to the Prudential within twenty days after the commencement of any Benefit Period for a total disability covered by the Policy or as soon thereafter as is reasonably possible. The Prudential, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs thereof. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements as to proof of claim upon submitting, within the time fixed for filing proofs of claim, written proof covering the occurrence, the character and the extent of the total disability for which claim is made.

Written proof of claim must be furnished to the Prudential within ninety days after termination of the month or lesser period for which the Prudential is liable. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

The Prudential at its own expense shall have the right and opportunity to examine any debtor as to whose sickness or injury a claim is made when and as often as it may reasonably require during the pendency of such claim.

Subject to due written proof of claim all accrued benefits will be paid to the Policyholder monthly and any balance remaining unpaid upon termination of liability will be paid to the Policyholder immediately upon receipt of due written proof.

No action at law or in equity shall be brought on the Policy prior to the expiration of sixty days after written proof of claim has been furnished in accordance with the requirements of the Policy. No such action shall be brought after the expiration of three years after the time written proof of claim is required to be furnished.

**NON-APPLICABILITY OF COVERAGE UNDER CERTAIN CIRCUMSTANCES.**—The coverage described above will not apply to the debtor with respect to said obligation (a) if said obligation was incurred on or after the debtor's sixty-fifth birthday or (b) if the debtor was not "gainfully employed" on the date said obligation was incurred. The term "gainfully employed" means being actively engaged in any business or occupation for remuneration or profit for not less than thirty hours during each week.

**TERMINATION OF COVERAGE.**—The coverage on the debtor with respect to said obligation shall automatically terminate on the earliest of the following dates: (a) the date on which the unpaid balance of said obligation under the instalment contract is discharged by prepayment thereof; (b) the 90th day after continued default by the debtor in the payment of any instalment of said obligation when due, unless the property under the instalment contract is repossessed during such 90 day period, or unless the debtor is then totally disabled on account of injury or sickness for which benefits are payable under the coverage; (c) in the event of repossession of the property under the instalment contract, then on the 15th day after such repossession, unless during such 15 day period the debtor redeems the repossessed property and the Policyholder reinstates the instalment contract; (d) the date on which the final instalment of said obligation is payable pursuant to the original contract evidencing same or any executed renewal thereof or an extension of time granted by the Policyholder for payment of one or more instalments thereof.

In the event that the debtor becomes a transferor under a Transfer of Equity prior to termination of coverage as above provided, the coverage on the transferor shall terminate on the date of execution by the Policyholder of such transfer.

Termination of coverage shall be without prejudice to any rights to benefits on account of total disability which commenced prior thereto.

In the event of prepayment in full of said obligation or upon the occurrence of the automatic termination events referred to in sub-divisions (b) and (c) of the first paragraph of this section, the Policyholder will pay or credit to the debtor a portion of the charge for the coverage, computed in accordance with the principles of the "sum of digits" formula commonly known as the "Rule of 78", provided that no such payment or credit need be made if the amount thereof would be less than \$1.00.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By

*Carol M. Shaak* President

Where the contract evidencing the debtor's obligation is modified by the terms of a renewal of the obligation or by an extension of time granted by the Policyholder for the payment of one or more instalments thereof, any additional charge on account of such renewal or extension for the coverage described herein will be disclosed to the debtor by a supplement hereto furnished to the debtor by the Policyholder.

Where a charge has been made to the debtor for coverage in excess of that described herein, any adjustment to which the debtor may be entitled will be made upon notification thereof to the Policyholder.

Any claim under this coverage should be submitted through the GMAC office to which the debtor's payments are made.

(The information referred to at p. 587 follows:)

EXHIBIT 5

Extract From

Senior Subordinated Loan Agreement, February 24, 1960

\$37,500,000 5-1/2% Subordinated Notes due June 1, 1981

6. Covenants.

\* \* \*

(d) The Company covenants that, so long as any of the Notes shall remain outstanding, it will at all times maintain (i) the aggregate of the capital stock, surplus and Junior Subordinated Indebtedness of the Company and its consolidated subsidiaries (determined on a consolidated basis and in accordance with generally accepted accounting principles and practices) at an amount at least equal to 200% of the aggregate amount then outstanding of the Notes and other Senior Subordinated Indebtedness of the Company, and (ii) the aggregate of the capital stock and surplus of the Company and its consolidated subsidiaries (determined on a consolidated basis and in accordance with generally accepted accounting principles and practices) at an amount at least equal to 150% of the aggregate amount then outstanding of Junior Subordinated Indebtedness of the Company. As used in this Agreement, the term "Junior Subordinated Indebtedness" means all indebtedness for borrowed money of the Company, whether outstanding on the date of this Agreement or incurred after the date of this Agreement, which provides for the subordination of such indebtedness only to the Superior Indebtedness and the Senior Subordinated Indebtedness of the Company. As used in this Agreement, the term "Senior Subordinated Indebtedness" means all indebtedness for borrowed money of the Company, whether outstanding on the date of this Agreement or incurred after the date of this Agreement, which provides for the subordination of such indebtedness only to the Superior Indebtedness of the Company.

Extract From

Junior Subordinated Loan Agreement, February 24, 1960

\$37,500,000 5-3/4% Junior Subordinated Notes due June 1, 1981

6. Covenants.

\* \* \*

(d) The Company covenants that, so long as any of the Notes shall remain outstanding, it will at all times maintain the aggregate of the capital stock and surplus of the Company and its consolidated subsidiaries (determined on a consolidated basis and in accordance with generally accepted accounting principles and practices) at an amount at least equal to 150% of the aggregate amount then outstanding of the Notes and other Junior Subordinated Indebtedness of the Company. As used in this Agreement, the term "Junior Subordinated Indebtedness" means all indebtedness for borrowed money of the Company, whether outstanding on the date of this Agreement or incurred after the date of this Agreement, which provides for the subordination of such indebtedness only to the Superior Indebtedness and the Senior Subordinated Indebtedness of the Company.

## GENERAL MOTORS CORPORATION

GENERAL MOTORS BUILDING

3044 WEST GRAND BOULEVARD

DETROIT 2, MICHIGAN

July 25, 1961

Mr. Herbert N. Maletz, Chief Counsel  
Antitrust Subcommittee of the Committee  
On The Judiciary  
United States House of Representatives  
Room 230  
House Office Building  
Washington, D. C.

Dear Mr. Maletz:

Attached please find fifteen (15) copies of each of the following statements in connection with Hearing Before The Antitrust Subcommittee of The Committee On The Judiciary, United States House of Representatives on H.R. 71:

1. Supplemental Statement by General Motors Corporation dated July 24, 1961;

2. Supplemental Statement by General Motors Acceptance Corporation dated July 24, 1961;

3. Statement by General Motors Corporation Concerning the Unconstitutionality of H.R. 71.

Very truly yours,

*Aloysius F. Power*  
Aloysius F. Power  
General Counsel

(The statement referred to at p. 493 follows:)

**SUPPLEMENTAL STATEMENT**

**BY**

**GENERAL MOTORS CORPORATION**

**HEARING BEFORE THE**

**ANTITRUST SUBCOMMITTEE**

**OF THE**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**H.R. 71**

**JULY 24, 1961**



This statement is submitted to clarify the position of General Motors Corporation with respect to certain of the statements and evidence in the record.

TERMINATION PROVISIONS - G.M. DEALER SELLING AGREEMENTS

In testifying in favor of H.R. 71, on June 30, 1961, Judge Thurman Arnold, as a witness on behalf of Associates Investment Company, stated:

"The purpose of this Bill is to dissolve a combination between the world's largest manufacturing corporation, General Motors, and one of the largest finance companies in the United States, General Motors Acceptance Corporation. The illegality of the acquisition and continuing ownership of GMAC by GM lies in the fact that GM has the power of life or death over its dealers. It can cancel their franchises and destroy them financially without giving any reason for such action." (Tr. P. 1066 - underscoring added)

"To say that an automobile dealer whose capital and livelihood are at the mercy of the arbitrary whim of GM can exercise an independent and objective judgment not to favor GMAC is nonsense." (Tr. P. 1067)

"Mr. McCulloch. Bringing this case right down to this one matter before

us, then, may we properly conclude by reason of the fact that General Motors now finances 42 per cent of General Motors products sold by its dealers, that that is proof enough that there is a substantial lessening of competition by reason thereof under existing law?

"Mr. Arnold. No, it is not the fact that they control 42 per cent or 22 per cent. It is the fact that they can cancel the dealer's franchise, and when you can cancel the dealer's franchise without giving any reason whatever, to say that your finance company will not get favorite treatment -- now it is not the 42 per cent. It is the power which they have.

"Mr. McCulloch. And that statement stands even in view of the Automobile Dealers Franchise Act passed by the Congress?

"Mr. Arnold. Oh, yes, the automobile franchise act gives them very little protection. I do not know whether it gives them any. It may give them some."  
(Tr. PP. 1102 - 1103)

Judge Arnold apparently has been misinformed.

The General Motors Dealer Selling Agreements

with General Motors dealers are subject to termination

by General Motors Corporation only for cause. On the other hand such Agreements may be terminated by the dealers without cause upon thirty days' written notice to General Motors.

The Selling Agreements between General Motors Corporation and General Motors dealers prior to World War II were continuing Agreements. The dealer had the right to terminate this continuing Agreement at any time upon thirty days' notice. General Motors Corporation had the right to terminate the Agreements only upon ninety days' prior written notice given once each year during the months of July, August or September. This arrangement permitted General Motors to review its business relationship with each dealer annually and to discontinue the arrangement if it was not satisfactory or desirable.

In 1944 all General Motors Dealer Selling Agreements were rewritten as Term Agreements. The term of the Agreement was from the date of signing until the expiration of two years from the date motor

vehicle production was resumed following the end of World War II. Thereafter, commencing November 1, 1947, the General Motors Dealer Selling Agreements were Term Agreements for a period of one year. In March of 1956, the term was extended to five years. Currently the General Motors Dealer Selling Agreement in effect with over 99 per cent of the General Motors dealers, is a five-year Term Agreement subject to termination by General Motors Corporation only for cause but subject to termination by the dealer without cause upon thirty days' written notice. The relatively few remaining dealers, as a result of their election, have either a one-year term, or a continuing Agreement which is cancelable by either party on notice.

Furthermore, the Dealer Franchise Act which became effective on August 8, 1956, provides in Section 2 as follows:

"Sec. 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States

in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith."

Contrary to Judge Arnold's testimony General Motors Corporation cannot ". . . cancel their General Motors dealers' franchise and destroy them financially without giving any reason for such action." Nor can General Motors ". . . cancel a dealer's franchise without giving any reason whatever . . ."

GM-GMAC CONSENT DECREE - JULY 28, 1952

On October 4, 1940, there was instituted in the District Court of the United States for the Northern District of Illinois, Eastern Division, a Civil Action No. 2177, in which the United States of America was plaintiff and General Motors Corporation, General Motors Acceptance Corporation and General Motors Sales Corporation were the defendants.

The suit had for its primary purpose the divorcement of General Motors Acceptance Corporation from General Motors Corporation.

The criminal case, which resulted in the conviction of these same defendants in October of 1939, had been appealed. It was, therefore, arranged by a series of stipulations that the joinder of issue in the civil suit should be deferred until a final judgment was reached by the Appellate Courts in the original case. On October 13, 1941, the United States Supreme Court by denying a rehearing made final a refusal to grant certiorari to General Motors Corporation.

Following this decision, an answer to the Government's Amended Complaint was filed on April 18, 1942. A short time thereafter on May 15, 1942, the defendants propounded interrogatories to the Government. These the Government objected to, following which, on or about October 5, 1942, the Court entered an order directing the Government to make answer to most of defendants' interrogatories. In due course, on November

19, 1942, defendants were served by the Attorney General with answers to interrogatories but on examination the answers were found to be insufficient and unsatisfactory.

Defendants thereupon, on December 16, 1942, made a motion to the Court to compel the United States of America to make further answers to the interrogatories, especially the interrogatory which sought from the Government the names of the dealers handling General Motors passenger automobiles who had been abused and coerced by the defendants or one of them, and upon whose testimony the Government would rely upon the trial.

The motion was granted, on April 1, 1943, and the Attorney General was directed to furnish such names to the defendant. On April 29, 1943, the Attorney General served upon defendants the further answers to interrogatories which had been ordered by the Court.

Included among the further answers served upon the defendants by the Government was the information concerning those dealers in General Motors passenger

cars who had, allegedly, according to the plaintiff, been abused or coerced by the defendants through various means to give their car finance business to General Motors Acceptance Corporation.

The answer embraced a list of approximately 400 dealers in General Motors automobiles identified further by their business addresses who, the Government claimed, had been thus coerced.

Following receipt of the further answers to interrogatories, the defendants notified the Attorney General's office that they intended to secure depositions from each of the approximately 400 dealers whom the Government intended to call to establish their case.

The defendants commenced taking depositions on September 21, 1943, complying in the case of each dealer with the formalities prescribed by the Rules of Federal Procedure. The Attorney General's office was present at the taking of each deposition and in almost all instances cross-examined the dealer witnesses.



On July 10, 1945, the Attorney General served notice of a motion to limit the depositions to be taken by defendants. On the hearing of the motion defendants opposed, claiming that they had the right to use the discovery procedures available to learn the issues which they had to meet on the trial. It was argued further that they had been diligent in taking depositions and would continue to be equally diligent in the future.

The Court after hearing argument continued the motion to limit depositions generally. The Attorney General never thereafter raised the issue.

The taking of depositions was resumed and continued until all the dealer witnesses in the Government's list (except those who had died) had been examined on deposition. The last deposition was taken on August 7, 1947. The total number was 391.

Apart from the 38 former dealers and 10 current dealers who testified at the criminal trial at South Bend in 1939, and who were included in the list

of approximately 400 dealers and ex-dealers furnished by the Government, not more than five or six of the remaining 343 dealers whose depositions were taken testified in any way to any abuse or coercion exercised toward them by the defendants or any of them in order to compel the use of General Motors Acceptance Corporation for automobile financing.

The picture developed from a study of the depositions of witnesses allegedly relied upon by the Government to establish its complaint against defendants calling for divorcement, showed clearly that the Government's case had collapsed.

In the circumstances the Government had the choice of going out and interviewing more General Motors dealers with a view of securing evidence which would justify its claim for divorcement or it could enter negotiations for a settlement though such a settlement clearly could not justifiably involve a divorcement in view of the state of the record.

Whether the Government again went into the field generally to seek to discover evidence justifying divorcement is not certain although at times reports were received from dealers, not previously contacted, of visits by Government representatives.

In 1950 the suggestion was received from the Attorney General's office by defendants' counsel that the parties to the litigation should explore the possibility of a consent decree. Defendants after a discussion among themselves notified the Government of their willingness to make such an exploration provided the issue of divorcement could be eliminated. After a time this was agreed to by the Attorney General's office.

The ensuing negotiations were continued and culminated in the existing consent decree entered into on July 28, 1952.

On May 10, 1952, on notice to the parties plaintiff and defendants in the litigation, a petition

was presented to the United States District Court Judge LaBuy by Scott W. Lucas and Charles A. Thomas, attorneys for the American Finance Conference, consisting of competitor finance companies, for leave to appear as amici curiae. The motion was granted by Judge LaBuy on May 21, 1952.

Thereafter the parties to the litigation worked out a consent decree which was presented in open court on June 21, 1952. On motion of the amici curiae the hearing on the consent decree was continued to July 28, 1952 to give the movants a chance to study the decree.

On July 28, 1952, after hearing counsel for all parties including the amici curiae, Judge LaBuy signed the consent decree.

The basic principle underlying the consent decree is that General Motors Corporation passenger car divisions shall treat GMAC no better than any competitive finance company (hereafter referred to as ODC). The restrictive provisions binding on GM car divisions are:

- (a) Wholesale financing procedures in effect with ODC shall be no more onerous than those in effect with GMAC. Plan currently in effect approved by court.
- (b) GMAC shall have no right to have offices in car factory buildings unless ODC shall be accorded the same right.
- (c) No information shall be furnished GMAC as to the identity of new dealers unless similar information is furnished upon written request to ODC.
- (d) GM car divisions shall not through coercion, persuasion or favoritism influence dealers to use GMAC.
- (e) GM car divisions shall not compel dealers to finance wholesale purchases or retail sales at rates established by GMAC.
- (f) No joint visits to dealers of representatives of GM car divisions and GMAC shall be made except in respect of transactions favorable to dealer involving other than car financing at wholesale or retail.
- (g) GM car divisions shall use no information obtained from dealers in person or by audit of books to influence dealer to patronize GMAC.

- (h) GM car divisions shall not endorse or advertise GMAC provided that such car divisions may endorse or advertise a specific plan for financing cars without mentioning GMAC and without discriminating in favor of GMAC and against ODC offering the same plan.

GMAC is enjoined:

- (a) From representing to any dealer that GM car divisions require him to use GMAC or that failure to use GMAC will result in the cancellation of his franchise or sales agreement or in the loss of any advantage or facility furnished by GM car divisions or from representing that use of GMAC by dealer will result in GMAC obtaining from GM car divisions special favors for such dealer.
- (b) From making joint visits on dealers with representatives of GM car divisions, except to work out with dealers special transactions for special facilities other than wholesale or retail car financing (e.g., capital loans). If such special facilities be furnished it is lawful to arrange as part consideration therefor that dealer shall do business with GMAC on an exclusive basis for a reasonable length of time.

The foregoing are the restrictive provisions of the decree. There are additional administrative provisions as well as a provision reading as follows:

"Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment or for the modification or termination of any of the provisions thereof or for the purpose of the enforcement of compliance therewith and the punishment of violations thereof."

A copy of the Consent Decree is attached. (Exhibit A.)

Paragraph X of the Consent Decree required that a copy of the judgment be mailed by General Motors Corporation to its dealers, regional, zone, city and district managers and field representatives in the continental United States, and a copy be mailed by General Motors Acceptance Corporation to its regional, branch, district and territorial managers in the continental United States.

The General Counsel of General Motors Corporation sent a copy of the judgment to every General Motors dealer with a letter stating:

"In our desire to comply fully with our obligations under that decree, I ask your earnest attention to the extent that you will without delay advise me personally of any situation that may arise, whether through the acts of representatives of either General Motors Corporation, General Motors Acceptance Corporation or both), which you deem to be in variance with the terms of the payment to the end that steps may be taken immediately to rectify the situation and to prevent its recurrence."

A copy of the General Counsel's letter is attached hereto. (Exhibit B.)

With respect to their own employees both General Motors Corporation and General Motors Acceptance Corporation went substantially beyond the steps required by the order to assure that their employees had full knowledge of the terms of the decree.

Following entry of the final judgment regional meetings were held by the General Counsel with the supervisory central office sales and the field personnel of the car divisions of General Motors Corporation



to explain the contents and meaning of the various provisions of the judgment and the importance of exact compliance with its terms. A copy of the judgment was sent to all such General Motors employees designated in the order together with a Memorandum dated November 15, 1952 summarizing the terms of the decree to assist the employees in understanding the decree and to aid them in its observance. Copies of the General Counsel's transmittal letter and his Memorandum dated November 15, 1952 are attached hereto. (Exhibits C and D respectively.)

Following similar regional meetings held by the General Counsel with supervisory field personnel of GMAC to explain the contents of the decree, GMAC not only gave a copy of the Final Judgment to the personnel required by the order but also furnished a copy to its assistant branch managers; accounting, dealer relations, credit and special collection managers; senior credit supervisors, credit men and field representatives. Each copy of the judgment was accompanied

by a copy of the General Counsel's Memorandum of November 15, 1952. A copy of the General Counsel's letter to GMAC employees is attached hereto. (Exhibit E.)

In all instances, each recipient of a copy of the judgment was requested to and did sign an acknowledgment of its receipt.

The foregoing steps were reported to and accepted by the Court pursuant to Paragraph I of its judgment.

In addition to the steps taken by General Motors Corporation and GMAC immediately following entry of the order, both have continued to follow a strict procedure to assure that all new General Motors dealers as well as all new General Motors and GMAC employees who might contact General Motors dealers are regularly given full information regarding the decree and are clearly informed of the desire of both corporations to comply fully with its terms.

The instructions issued by the Chevrolet Division illustrate the procedure followed by General Motors Corporation.

Since the entry of the order in 1952 Chevrolet has required that a copy of the decree be furnished to all new Chevrolet dealers appointed after the date of the order. To assure that this is done, it requires zones to obtain the written acknowledgment of the receipt of a copy of this decree from each individual who is named as a principal of the new dealership in paragraph Third of the Dealer Selling Agreement.

In addition, Chevrolet has required that all new Chevrolet employes or regular employes when initially appointed to any of the following positions be given a copy of the consent decree and a copy of the General Counsel's Memorandum of November 15, 1952:

Regional Managers  
Assistant Regional Managers  
Zone Managers  
Branch Managers  
City Managers

Assistant Zone Managers  
 Regional Organization Managers  
 Zone Organization Managers  
 Regional Sales Promotion Managers  
 Zone Sales Promotion Managers  
 Regional Business Managers  
 Zone Business Managers  
 Regional Car Distribution Managers  
 Regional Plant Distribution Managers  
 Zone Distribution Managers  
 Assistant Regional Plant Distribution  
 Managers  
 Assistant Plant Distribution Managers  
 Assistant Zone Distribution Managers

Regional Truck Managers  
 Zone Truck Managers  
 Zone Used Car Managers  
 Regional Service Managers  
 Zone Service and Mechanical Managers  
 Service and Mechanical Representatives  
 Regional Parts and Accessories Managers  
 Zone Parts and Accessories Managers  
 Regional P&A Radio Specialists  
 Regional P&A School Instructors  
 Assistant Zone P&A Managers  
 Regional Warehouse Managers  
 Warehouse Managers  
 Regional Service Engineer - Product  
 Zone Plant Managers  
 Zone Fleet Service Managers  
 District Managers  
 Public Relations Representatives

Similarly, GMAC has regularly required that  
 each new employe or regular employe when initially

appointed to any of the following positions be furnished with a copy of the consent decree and the General Counsel's Memorandum:

Regional Managers  
Control, Field and Purchase Branch  
Managers  
Assistant Branch Managers  
Department Managers and Assistant  
Managers  
Collection Managers  
Senior Credit Supervisors  
Credit Supervisors, Supervisors  
Truck Financing, Special  
Collection Managers, Credit Men  
Those handling sales and collections  
in the field

In addition, GMAC instructs all its branch personnel that "it is important that all GMAC employees regardless of job classifications be aware of the consent decree and be familiar with the complaint upon which it was based and with its terms".

The following specific instructions to GMAC branches illustrate the clear desire to live strictly within the terms of the 1952 consent decree:

"Meetings Attended by Both Dealers and GM Division Representatives - (Such as for New Products Announcement) - While GMAC's attendance at such meetings is illegal only in the event it is for the purpose of influencing dealers to use GMAC, an illegal motive can be imputed by others even where none existed. It is our policy not to attend such meetings."

"GMAC Use of Meeting Rooms and Cafeteria Facilities at GM Training Centers - Unless such facilities were also made available to our competition, there could be claims of discrimination in favor of GMAC and other imputations of illegal motive. Consequently, GMAC must not use these facilities and branches will be guided accordingly."

Faced with such clear evidence of a full intention to comply with the terms of the decree and faced also with the need to admit that in fact there has been complete compliance with the order by both General Motors Corporation and GMAC, the proponents of the bill are driven to claiming that the mere relationship between General Motors Corporation and GMAC is "covert coercion" or "unfair competition" justifying divestiture. The actual GMAC share of the General

Motors dealers' instalment transactions plus the substantial increase of the banks' share of the same market refute this contention.

COMPLETED AND PENDING ANTITRUST LITIGATION TO WHICH  
GENERAL MOTORS CORPORATION AND/OR GMAC WERE PARTIES

Reference was made in the record to several actions involving General Motors Corporation or General Motors Acceptance Corporation or both.

The criminal case which preceded the civil action referred to above and which resulted in the conviction of General Motors Corporation and General Motors Acceptance Corporation was cited. There was at least an implication that this conviction illustrated a flagrant violation of the antitrust laws. In view of this, a brief review of the history of that action is desirable.

The indictment was issued against four corporations--General Motors, General Motors Sales, GMAC and GMAC of Indiana--and 19 officers and other employees

of these corporations. The individual defendants included their principal officers and, specifically, the chairman of the board, the president and three vice presidents of General Motors and the president and four vice presidents of GMAC.

At the trial 48 dealers of some 50,000 individuals who were or had been General Motors dealers testified concerning transactions or incidents which occurred over the period that GMAC had been in business. In addition, 56 dealer contact reports of a total of hundreds of thousands of such contact reports for the period involved, were offered in evidence.

Under the rules of evidence applied by the District Court, the defendants were denied the opportunity to produce the proffered testimony of a large number of other dealers or any evidence of the practices of other finance companies which the defendants contended adversely affected distribution of General Motors cars.



The United States Court of Appeals, Seventh Circuit, affirmed the conviction and approved the foregoing rulings in an opinion handed down in May of 1941 (121 Fed.2d 376). However, the United States Court of Appeals, Seventh Circuit, in the case of Emich Motors Corporation v. General Motors Corporation, in an opinion issued in March 1950 (181 Fed.2d 70), modified its prior ruling with respect to the admission of evidence as to the practices of independent finance companies, saying:

"In the criminal case we noted a possible distinction between the situation of customers dissatisfied over faulty performance of their cars and those dissatisfied over financing, commenting that it was improbable that the latter would blame GMC because they were dispossessed or defrauded by an independent finance company. But in the actual case presented here defendants offered evidence calculated to demonstrate that the improbable had occurred. The large number of complaints received by GMC based on finance as well as service indicated that customers were holding GMC responsible for both. (Underscoring ours)

Two further occurrences during the trial are of interest. In discussing the defendants' motions to

dismiss following the close of the Government's case, the court stated in the presence of the jury:

"This case is, I think, without precedent.

"The theory that underlies the indictment is one which, so far as I have learned, is completely without antecedent in any preceding case." (U.S. v. GM et al. Record pp. 825-826)

The court then stated that he was denying defendants' motions on the basis that

"We have here a situation where, if I should allow this motion, there is no opportunity upon the part of the Government to have a review by the Supreme Court, the action of which I cannot undertake to foretell, the decision of which I feel in no wise capable of prognosticating.

"If I should allow this motion the Supreme Court would not have the opportunity to decide what the law is in a case which is, as I have said, without precedent." (Ibid.)

When the jury returned for further instructions following its initial deliberations, the following

questions were asked of the court by the foreman on behalf of the jury (U.S. v. GM et al. R. 1946):

"The Foreman: Your Honor, the jury wants to know if the defendants are found not guilty, can the government appeal the case?

"The Court: No, it cannot.

"The Foreman: If the defendants are found guilty, can they appeal the case?

"The Court: Yes."

The final verdict of the jury was also unusual. It was claimed by the Government that the individual defendants were the ones who created the alleged conspiracy and directed the claimed coercive actions against the General Motors dealers. The jury found the corporate defendants guilty but acquitted the officers and employees who were indicted and made defendants as the corporate representatives who perpetrated the conspiracy.

Following the conviction in the criminal case, seven treble damage civil actions under the Antitrust Laws were instituted against General Motors Corporation. Two of these resulted in jury verdicts for the defendant; another was dismissed at the close of the plaintiff's proof; another was dismissed on motion for summary judgment and three were dismissed on technical legal grounds.

Statements have been made in these hearings which do not correctly describe the circumstances surrounding the FTC proceedings prior to World War II with respect to General Motors parts and accessories, which led to the 1942 FTC order to which General Motors is subject. These statements have also indicated that General Motors is not complying with this order and is coercing General Motors dealers to buy General Motors parts. The following outlines the history and facts relating to this proceeding.

Shortly prior to the filing of the FTC complaint, the United States Supreme Court, in the case

of Pick Manufacturing Co. v. General Motors Corporation (299 U.S. 3, October 1936) had affirmed unanimously the conclusion of the two lower courts that the agreement in the General Motors dealer selling agreement that the dealer would not use unauthorized parts in the repair of General Motors motor vehicles did not violate the Clayton Act.

The FTC complaint that General Motors was coercing the dealers to use General Motors parts and accessories was filed in June 1937. The trial thereunder began in the following month. Testimony was taken from time to time over a two-year period and all trial proceedings were terminated in September 1939.

In April 1940, the FTC Trial Examiner issued findings of fact and conclusions of law favorable to General Motors. The FTC attorney took extensive exception to such findings and in November 1941 the Federal Trade Commission reversed its Trial Examiner's findings and conclusions and issued a Cease and Desist Order dated November 12, 1941.

In January 1942, General Motors filed a notice of appeal to the Circuit Court of Appeals. In June 1942 the Federal Trade Commission, at General Motors' request, modified its order of November 12, 1941. In view of this, General Motors withdrew its appeal and the modified order became final.

Since the issuance of the modified FTC order in June 1942, there have been a number of events which demonstrate that General Motors has sought to comply fully with the terms of this order and, specifically, has not been guilty of coercing its dealers to purchase General Motors parts for replacement:

1. Immediately following the issuance of the order, all affected General Motors personnel were advised by letter and meetings, of the nature and scope of the order and the requirement that they comply strictly with its provisions. This was reported to and accepted by the FTC in General Motors Report of Compliance with the order.

2. In connection with this, General Motors changed the paragraph in the dealer selling agreement which was held not to violate the Clayton Act in Pick Manufacturing Co. v. General Motors Corporation (Oct. 1936, 299 U.S. 3) to provide that the dealer would not represent that he was using new genuine General Motors parts in repairing General Motors vehicles unless that was the fact.

3. In 1947 General Motors sent a letter to the General Sales Manager of each automobile division again explaining the nature and scope of the order and the requirement that each employe understand and strictly comply with its terms and provisions.

4. In 1948 an Executive Vice President of General Motors sent a similar letter to the General Managers of all General Motors Divisions for distribution to all employes to whom the order might apply.

In this letter, General Motors employees were advised that:

"The Corporation and its Divisions have always subscribed to the principle of aggressively merchandising the products of General Motors Corporation by sound ethical business practices and at no time have knowingly permitted coercive business practices. Consequently, in complying with this Cease and Desist Order, it is imperative that each employee fully understand his responsibility for so conducting himself in his contact with dealers, distributors and their employees that no hint or suggestion of intimidation or coercion ever enters into such relationships.

"While the 'Cease and Desist Order' was directed against the Car Divisions of the Corporation, it should be reviewed and understood by all Corporation personnel (especially new people who have been employed since June 1942) who have the responsibility of supervising and contacting any of the Corporation's dealers, distributors or their employees."

5. In late 1953 the FTC undertook a detailed investigation of General Motors' compliance with the order. In addition to whatever investigations were made outside of General



Motors by the FTC, it made an extensive and detailed inspection, over a period of more than seven months, of a large number of the records and files of General Motors. This included the examination in detail of: (a) the files and records of eight zone offices of various Car Divisions in different parts of the United States, with the areas, zones, and divisions all selected by the FTC; (b) the files and records relating to 241 General Motors dealers selected by the FTC from all parts of the country; (c) the files and records relating to 167 other General Motors dealers whose franchises were not renewed during the years 1950 through 1953; and (d) the policies and procedures and other material used by all Car Divisions in connection with their parts and accessories business.

6. In February 1956, the FTC undertook an extensive investigation into the entire General

Motors parts and accessories business. This, of course, included an investigation of the current compliance by General Motors with the FTC order of June 1942. The part of this investigation which involved a review of General Motors material, files and records covered a period of two years during which countless files and records and other material of both General Motors and its various divisions and activities relating to all phases of its parts and accessories business were examined by two and sometimes three representatives of the FTC.

7. In 1960, pursuant to a request made by the FTC in May 1960, a further written report of Compliance with the order was filed.

8. Periodically, each Car Division advises its personnel of the meaning and content of the order and of the requirement for strict compliance therewith. Chevrolet Division, for

instance, again advised its field personnel of the FTC order in August 1960 and directed "that this order be covered once each year with the entire field organization in any regularly scheduled meeting."

9. In the later part of 1960, General Motors supplied the FTC, at its request, with copies of the dealer selling agreements currently used by the Car Divisions. In April 1961, the FTC was given, at its request, a written explanation of the same and their relation to sales of parts and accessories to dealers.

Brief reference was also made in the Hearing to the Federal Trade Commission Order, directing General Motors Corporation and General Motors Acceptance Corporation to cease and desist from advertising the '64 plan' of G.M.A.C. A more detailed explanation of the facts upon which the Order was predicated, appears to be in order.

In the fall of 1935 GMAC announced a lowering of its finance charge by advertising its '64 plan'. The announcement, in effect, told the public that it could calculate the charge at  $1/2\%$  per month on the unpaid balance plus the cost of insurance or  $6\%$  for 12 months. It advised the public: "That's your whole financing cost. No extras. No service fees. No other charges." All the other major car manufacturers and finance companies also adopted similar programs.

In the spring and summer of 1936 the Federal Trade Commission investigated these advertising programs and issued complaints against the motor vehicle manufacturers. Subsequently, the Federal Trade Commission obtained agreements to cease and desist from the practices alleged in the complaints from all respondents except Ford Motor Company. Although General

Motors ceased the program at that time, it decided to litigate the legal issues involved.

In November 1936, the Federal Trade Commission filed a complaint against General Motors and GMAC claiming that such advertising was misleading because it would be construed by the public as 6% simple interest.

In December 1939, after a hearing, the Federal Trade Commission issued its cease and desist order.

This was appealed to the 2nd Circuit Court of Appeals. That Court affirmed the FTC order in its opinion of August 12, 1940. The Court in its opinion stated:

"It may be that there was no intention to mislead and that only the careless or the incompetent could be misled. But if the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, 'wayfaring men, though fools, shall not err therein,' it is not for the courts to revise their judgment." General Motors Corporation et al. v. Federal Trade Commission (CCA 2nd 1940) 114 Fed. 2d. 33 at 37.

Reference was also made in the record, to a pending civil antitrust suit against General Motors Corporation charging monopolization in the manufacture and sale of buses, to another pending civil antitrust suit against General Motors Corporation involving its acquisition of Euclid Road Machinery Company, a manufacturer of off-the-road earth-moving equipment, and to a criminal indictment returned against General Motors Corporation, charging monopolization in the manufacture and sale of diesel locomotives.

It would be inappropriate at this time to comment on the proceedings to date in these pending actions. However, it would be appropriate to comment on an extensive investigation and hearing by the Subcommittee On Antitrust And Monopoly of the Committee On The Judiciary, United States Senate, completed in 1955 with respect to the manufacture and sale by General Motors Corporation of diesel locomotives.

Prior to the hearings, the staff of the

Subcommittee investigated the diesel locomotive industry. At the hearings, representatives of three diesel locomotive manufacturers who were in competition with General Motors in this industry, testified and were questioned at length. At this hearing Mr. C. R. Osborn, Vice President of General Motors Corporation, testified with respect to the activities of the Corporation's Electro-Motive Division which manufactured and sold diesel locomotives. He read a prepared statement which was placed in the record. A copy of this statement is attached. (Exhibit F.) After he concluded reading the statement, the following colloquy occurred between Mr. Osborn and the Chairman and Counsel for the Subcommittee:

"Mr. Burns. All of the balance of this will be printed in the record.

Senator O'Mahoney. We may have some difficulty in convincing the Committee on Printing to allow us to reproduce at all successfully these beautiful photographs that you have here.

"Mr. Osborn. Those beautiful photographs, while they are Alco and Baldwin and Fairbanks Morse, we make them look very beautiful in our shops.

Senator O'Mahoney. I thought the engine was not visible.

Mr. Osborn. We fixed up the outside, too. (Laughter.)"

### CONCLUSION

The facts and circumstances reported above in this memorandum which relate to the antitrust litigation in which General Motors Corporation and General Motors Acceptance Corporation were defendants, reveal that very complicated technical legal issues were involved. In fact, when a newspaper "Chicago Tribune" reported with respect to the argument and ruling on the defendants' motion to dismiss at the close of the Government's case, in the criminal action in South Bend in 1939, it headlined its article with the caption "PUZZLED JUDGE REFUSES TO END MOTORS TRIAL". The article quoted the following observation made by the judge when issuing his ruling:

"I must confess, gentlemen, at the end of 17 years upon the Bench, at the end of 35 years engaged as a lawyer and as a judge, I find less certainty in the law today than at any time in that period."



Over the past few years there have been several decisions by the United States Supreme Court on antitrust matters and issues, with some judges dissenting, which have reversed the decisions of lower courts on the same antitrust matters and issues and have overruled prior precedents established in other cases. In the Cellophane case the Supreme Court, with an evenly divided court, affirmed the single trial judge who had held that no anti-trust offense had been committed or proved. In this case, the affirmance was without opinion. In the DuPont case, the Supreme Court, by a divided bench, four to three, in a lengthy majority opinion and a lengthy dissent, reversed the trial judge, agreeing, however, with the lower court that there had not been over a period of more than thirty years any restraint of trade or any conduct which could be characterized even as an attempt to monopolize. The sanctions of the antitrust laws were imposed because, in the opinion of the majority, factors involved indicated that, in the future, the relationship might be used by DuPont to restrain trade or engage in activities leading to monopoly.

In view of this, it is not surprising that individuals engaged in business activities who are not expert

in legal matters find themselves and the business concerns they may represent, involved in conduct that despite good intentions may turn out to be antitrustwise of questionable validity or even illegal. This should be acknowledged, just as it is recognized that there are certain acts and practices that are clear and obvious violations of the anti-trust laws, which should be known as such by persons engaged in business activities, particularly those who have legal advice and counsel available to them.



EXHIBIT A

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE  
THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED  
STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

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IN THE  
**United States District Court**  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES OF AMERICA,	} Civil No. 2177
<i>vs.</i>	
GENERAL MOTORS CORPORATION, GENERAL MOTORS ACCEPTANCE CORPORATION, and GENERAL MOTORS SALES CORPORATION.	
<i>Defendants.</i>	
<i>Plaintiff,</i>	

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**FINAL JUDGMENT**

DATED July 28, 1952.

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Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

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IN THE

# United States District Court

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

GENERAL MOTORS CORPORATION,  
GENERAL MOTORS ACCEPTANCE CORPORATION,  
and GENERAL MOTORS SALES CORPORATION.

*Defendants.*

Civil  
No. 2177

## FINAL JUDGMENT

The plaintiff, United States of America, having filed its amended complaint herein on June 21, 1941, and the same having been amended pursuant to stipulation filed and order entered April 15, 1942; the defendant, General Motors Sales Corporation, having been dismissed pursuant to stipulation on June 17, 1952; the defendants General Motors Corporation and General Motors Acceptance Corporation having appeared and filed their consolidated answer to the amended complaint as amended and asserted the truth of their answer and their innocence of any violation of law; the plaintiff and defendant desiring to avoid the expenses of a trial of the issues and the loss of time occasioned thereby; no testimony having been taken, each of the defendants having, by their respective attorneys, consented to this judgment without any findings of fact upon the condition that neither such consent nor this judgment shall be an admission or adjudication that the defendants have violated any statute; and the United States of America by its counsel having consented to the entry of this judgment and to each and every provision thereof, it is hereby ORDERED, ADJUDGED AND DECREED:

### I.

This Court has jurisdiction of the subject matter herein and all parties hereto and the complaint herein states a cause of action against the defendants General Motors Corporation and General Motors Acceptance Corporation, under the Act of Congress of July 2, 1890, c. 647, 26 stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", and acts amendatory thereof and supplemental thereto.

### II.

General Motors Corporation and General Motors Acceptance Corporation and their respective officers, directors, agents, employees, successors, subsidiaries, assigns and divisions be and they are hereby enjoined

from doing the acts hereby prohibited and ordered to do the acts hereby directed.

### III.

The following terms as used herein shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from, or approved by General Motors Corporation, that provides for the purchase at wholesale of new passenger automobiles made by General Motors Corporation, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new passenger automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the retail cash delivered price of a passenger automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged in wholesale financing or retail financing or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of passenger automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include defendant finance company.

(i) "Institutional advertising" shall mean advertising by the manufacturer as distinguished from advertising by any subsidiary or division.

### IV.

(a) General Motors Corporation shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by General Motors Corporation to any dealer upon written specific or continuing authority of the dealer to the extent and under the circumstances hereinafter set forth;

(b) If General Motors Corporation assigns to General Motors Acceptance Corporation or to any other finance company any document of title or lien in respect of such automobiles it shall not refuse upon written request of any finance company to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions; provided, however, that

the procedure in effect since January 1948 as amended providing for payment of wholesale shipments by finance companies engaged in the wholesale financing of such automobiles, a copy of which is attached hereto, or any other procedure approved by the Court after sixty (60) days' notice to the Attorney General and an opportunity to be heard, designed to produce a substantially similar result shall be deemed to constitute compliance with this paragraph;

(c) To the extent, if any, that General Motors Corporation furnishes General Motors Acceptance Corporation or any other finance company space for maintaining an office in any manufacturing or assembly plant of General Motors Corporation, it shall not refuse upon substantially equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities pursuant to the procedure referred to in paragraph IV (b), *supra*, to dealers operating under franchises of General Motors Corporation, to furnish it space for maintaining an office in such plant;

(d) If General Motors Corporation adopts a practice, procedure, or plan of furnishing to General Motors Acceptance Corporation or any other finance company the identity of, or other information concerning, new or prospective dealers, it shall not knowingly refuse to furnish that information upon specific or continuing request to any other finance company whose territory includes the location of such dealers' or prospective dealers' place of business, provided that such continuing request shall be renewed in writing at the beginning of each calendar year and shall be lodged in the office of the zone manager having jurisdiction over the new or prospective dealer; and provided that General Motors shall not adopt any procedure, practice, or plan of furnishing to General Motors Acceptance Corporation or any other finance company any information concerning dealers for the purpose of enabling General Motors Acceptance Corporation or other finance company to obtain the dealer's finance business;

(e) General Motors Corporation shall not, for the purpose of influencing a dealer to patronize General Motors Acceptance Corporation or any other finance company, adopt any practice, procedure, or plan for giving or making available or denying or threatening to deny any dealer any service or facility or for discriminating among its dealers in any other manner;

(f) General Motors Corporation shall not enter into any contract or agreement with any dealer which provides that the dealer shall patronize only General Motors Acceptance Corporation or any other finance company selected by General Motors Corporation, or which requires the dealer to observe any General Motors Acceptance Corporation plan or rate of financing the purchase and sale of automobiles;

(g) General Motors Corporation shall not cancel or terminate any contract, franchise, or agreement with any dealer or threaten to do so because of failure of such dealer to patronize General Motors Acceptance Corporation or any other finance company;

(h) The manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with General Motors Acceptance Corporation that an agent of the manufacturer and an agent of the finance company shall together be present with any



dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize General Motors Acceptance Corporation provided, however, that it shall not be a violation of this decree for the manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(i) General Motors Corporation shall not, for the purpose of influencing a dealer to patronize General Motors Acceptance Corporation or any other finance company or group of finance companies, use any information obtained from any dealer, his agent, representative, servant or employee, either directly by examination or inspection of his books or records or through financial, operating, or other statement or report or otherwise, nor shall it require for such purpose the disclosure of any such information. Nothing in this decree contained shall apply to the disclosure of any information at the dealer's request and for the purpose of assisting the dealer to obtain wholesale or retail financing or special facilities or services from General Motors Acceptance Corporation or any other finance company.

## V.

The manufacturer shall not recommend, endorse or advertise the General Motors Acceptance Corporation or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the manufacturer in good faith:

(a) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by General Motors Corporation or from time to time withdrawing or modifying the same;

(b) From recommending to its dealers the use of such plans;

(c) From advertising to the public and recommending the use of such plans;

(d) From including mention of any wholly owned finance company in its institutional advertising;

(e) From advertising General Motors Acceptance Corporation or any other finance company in connection with sales made by factory owned retail stores.

## VI.

General Motors Acceptance Corporation:

(a) Shall not represent in any manner to any dealer that General Motors Corporation requires him to patronize General Motors Acceptance Corporation;

(b) Shall not represent to any dealer that his failure to use General Motors Acceptance Corporation will result in the cancellation or termina-

tion by General Motors Corporation of his contract, franchise, or agreement;

(c) Shall not represent to any dealer that his failure to use General Motors Acceptance Corporation will result in the loss of any advantage, service or facility furnished by General Motors Corporation or that General Motors Acceptance Corporation can obtain from General Motors Corporation any facility, service, or privilege which is not available to any other finance company;

(d) Shall not enter into any contract, agreement or understanding with any dealer in connection with wholesale financing which requires the dealer to deal with General Motors Acceptance Corporation in respect of retail financing of automobiles;

(e) Shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with the manufacturer that an agent of the manufacturer and an agent of General Motors Acceptance Corporation shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize General Motors Acceptance Corporation; provided, however, that it shall not be a violation of this decree for General Motors Acceptance Corporation by joint conference with the dealer or prospective dealer and a representative of the manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with General Motors Acceptance Corporation on an exclusive basis for such reasonable period of time as may be agreed between them.

## VII.

Nothing in this judgment shall be construed as an adjudication of the legality of or affect any right or privilege which General Motors Acceptance Corporation may have to enter into, any contract with any dealer to whom General Motors Acceptance Corporation has made a loan (other than transactions involving the wholesale or retail financing of automobiles in the regular course of business) which provides that the dealer will do business with General Motors Acceptance Corporation on an exclusive basis.

## VIII.

The defendants shall not in combination or conspiracy do any act which this judgment forbids or omit any act which this judgment requires.

## IX.

Except as otherwise expressly provided in this decree, nothing in this decree shall deprive the manufacturer of any right or rights it may have under existing law.

## X.

General Motors Corporation shall mail a copy hereof to its dealers, regional, zone, city and district managers and field representatives in the continental United States and defendant finance company shall mail a

copy hereof to its regional, branch, district and territorial managers in the continental United States; and the manufacturer and the defendant finance company respectively shall before the effective date of this judgment file with this Court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

### **XI.**

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment or for the modification or termination of any of the provisions thereof or for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

### **XII.**

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or an Assistant Attorney General and on notice reasonable as to time and subject matter to the defendant made to its principal office, and subject to any legally recognized privilege be permitted:

(a) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant related to any matters contained in this judgment;

(b) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section XII shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

### **XIII.**

This decree shall go into effect one hundred and twenty (120) days after the date of entry hereof.

**WALTER J. LA BUY**  
United States District Judge

Dated: July 28, 1952

We hereby consent to the entry of the foregoing final judgment.

For Plaintiff:

**NEWELL A. CLAPP**  
Acting Assistant Attorney General

**HOLMES BALDRIDGE**  
Assistant Attorney General

For Defendants:

**FERRIS E. HURD**  
**HENRY M. HOGAN**

**PROCEDURE FOR DEALING WITH FINANCE**  
**COMPANIES AND BANKS ENGAGED IN WHOLESALE**  
**FINANCING OF GENERAL MOTORS PRODUCTS**

[The pages which follow contain  
the exhibit referred to in paragraph  
IV (b) of the decree.]

**PROCEDURE FOR DEALING WITH FINANCE  
COMPANIES AND BANKS ENGAGED IN WHOLESALE  
FINANCING OF GENERAL MOTORS PRODUCTS**

The procedure outlined herein is for dealing with finance companies, other than General Motors Acceptance Corporation, and banks engaging in wholesale financing of new cars and trucks for General Motors dealers. It provides for direct dealing to the extent that title to the financed product will pass directly from the Division to the finance company or financing bank upon shipment.

The required action on the part of the dealer, finance company or bank, and the Division in establishing arrangements for such transactions is set forth under the heading **PRELIMINARY ARRANGEMENTS**. The required method of handling such transactions, after arrangements have been completed, is detailed under the heading **SETTLEMENT PROCEDURE**.

In view of the several banking functions considered herein, banks will be referred to, for the most part, by their functional names. A bank will function as an authorizing bank and collecting bank in all cases where the financing is by a finance company and in certain cases where the financing is by another financing bank. A bank will function as a financing bank and collecting bank in those cases where the authorization of an additional bank is not required.

Both finance companies and financing banks, where a common designation is desirable, will be referred to as O.D.C.s, an abbreviation of the name outside discount companies.

**Preliminary Arrangements**

Essential to all arrangements with O.D.C.s will be a dealer's authorization for financing and a commitment by the O.D.C. The O.D.C. will also be requested to enter into a repurchase option agreement with the Division, since such an agreement will be mutually advantageous to the O.D.C. and the Car Division in liquidating the O.D.C.'s interest in cars that may be repossessed and protecting the good-will of the public towards the Car Division and its dealers with respect to repossessed cars which may ultimately reach the public. The required forms are shown in Exhibits I and II as follows:

- I-A — Dealer's Authorization for Financing  
(Finance Company)
- B — Dealer's Authorization for Financing  
(Bank)
- II-A — Finance Company Commitment on Wholesale Shipments  
(Single Dealer)
  - A-1 — Bank Authorization with Respect to Finance Company  
Commitment on Wholesale Shipments (Single Dealer)
  - B — Finance Company Commitment on Wholesale Shipments  
(Multiple Dealer)
  - B-1 — Bank Authorization with Respect to Finance Company  
Commitment on Wholesale Shipments (Multiple Dealer)

- C — Bank Commitment on Wholesale Shipments (Single Dealer)**
- C-1 — Local Bank Commitment on Wholesale Shipments Where Additional Bank Authorization is to be Obtained with Respect Thereto (Single Dealer)**
- C-2 — Bank Authorization with Respect to Local Bank Commitment on Wholesale Shipments (Single Dealer)**
- D — Bank Commitment on Wholesale Shipments (Multiple Dealer)**
- D-1 — Local Bank Commitment on Wholesale Shipments Where Additional Bank Authorization is to be Obtained with Respect Thereto (Multiple Dealer)**
- D-2 — Bank Authorization with Respect to Local Bank Commitment on Wholesale Shipments (Multiple Dealer)**
- E — Finance Company Repurchase Option Agreement**
- F — Bank Repurchase Option Agreement**

The dealer's authorization authorizes the Division to transfer to the designated O.D.C. title to the financed product upon payment for the dealer's account.

The commitment by the O.D.C. authorizes the Division to draw a sight draft on the O.D.C. for the amount of the invoice (when the order specifies the use of such O.D.C.), the O.D.C. agreeing to pay such drafts upon presentation.

Where the financing is by a finance company, the latter's commitment (whether the plan selected be the single dealer plan or the multiple dealer plan) must be supported by the authorization of a bank designated by it with the concurrence of the Division and the Treasurer's Office.

Where the financing (under either of the alternative plans) is by a bank directly, the authorization of an additional bank will similarly be required in the discretion of the Division and the Treasurer's Office, depending on the capitalization of the financing bank, the maximum number of cars which it may be reasonably estimated may be shipped to the dealer in any five (5) day period and other credit factors deemed appropriate for consideration in the circumstances in each case.

Presentation of drafts in the case of finance companies and in the case of financing banks requiring the authorization of an additional bank will be at the authorizing bank.

The dealer's authorization continues in effect until written notice of suspension or revocation by the dealer or the O.D.C. is received by the Division's zone office. The commitment by the O.D.C. and the bank authorization continue in effect until written notice of suspension or revocation by the O.D.C. or the collecting bank is received by the Division's zone office. The dealer authorization, O.D.C. commitment and bank authorization remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to products delivered to the dealer, in transit, in the possession or custody of a carrier or assigned by the Division at the plant for delivery to a carrier, within twenty-four (24)

hours (excluding Saturdays, Sundays and holidays) after receipt by the zone office of such notice.

The repurchase option agreement provides that the O.D.C. will give the Division written notice of any repossession within ten (10) days after repossession takes place. The Division must, in turn, give the O.D.C. notice of its decision with respect to repurchase within ten (10) days after receipt of the O.D.C.'s notice of repossession. The Division will repurchase any such motor vehicle whenever the Division deems the same practicable and desirable, although the Division may be required by the financing organization to repurchase if the Division fails to give the ten (10) day notice mentioned above.

The repurchase arrangement between the O.D.C. and the Division will continue in effect unless and until terminated by the O.D.C. or by the Division upon ten (10) days' written notice.

Upon inquiry from an O.D.C. regarding the establishment of wholesale financing arrangements, the Division will forward to the O.D.C. a printed letter form as shown in Exhibit III-A, together with a copy of the brochure shown in Exhibit III-D. Upon inquiry from a dealer, the Division will advise the dealer as per letter form shown in Exhibit III-B or III-C enclosing copy of the brochure shown in Exhibit III-D.

Upon receipt of the dealer's authorization and commitment from the O.D.C., the Division will forward to General Motors Treasurer's Office, attention of Bank Analysis Section, the following information:

O.D.C. name and location

authorizing bank name and location

dealer name and location

estimated maximum invoiced amount of shipments:

—any one (1) day

—five (5) consecutive business days

commitment limitation as to the amount of drafts to be drawn in any one (1) day

The above information will be submitted in duplicate on the card form shown in Exhibit IV. While it is not necessary for an O.D.C. to enter into the repurchase option agreement in order to finance General Motors cars at wholesale under this procedure, the Division, when submitting the above information, should also notify General Motors Treasurer's Office whether the O.D.C. has entered into the agreement, so that the Corporation's obligations in that respect may be known.

The Treasurer's Office will either approve the financing bank or request the Division to inform the dealer or such bank, as circumstances may require, that the bank's commitment is not acceptable without the authorization of an additional bank.

Similarly, the Treasurer's Office will either approve the bank named as authorizing bank by the finance company or financing bank or, in lieu of such approval, request the Division to advise the finance company or financing bank that such authorizing bank is not acceptable and suggest one or more acceptable banks designated by the Treasurer's Office. In

such cases, care should be exercised to avoid communicating anything that might reflect unfavorably on any bank, beyond, of course, the mere fact of preference for the substituted bank or banks.

The Treasurer's Office will also supply the name of the General Motors depository bank to which proceeds of drafts should be remitted by the collecting bank. The original of the duplicate card form will be used by the Treasurer's Office to transmit this information to the Division, the duplicate being retained by the Treasurer's Office.

Upon the return of the original of the duplicate card form bearing the Treasurer's Office approval of the authorizing and/or financing bank, the Division will notify the dealer that orders specifying wholesale financing through the O.D.C. will be acceptable and forward to the O.D.C. one copy, duly executed, of the repurchase option agreement.

### Settlement Procedure

Upon each shipment where the dealer specifies wholesale financing through an O.D.C., the Division will draw a multiple copy sight draft (see Exhibit V) and issue a bill of sale and invoice as follows:

#### 1. *Sight Drafts*

- a. If the O.D.C. is a finance company or a financing bank requiring an authorizing bank, the draft will be drawn on the O.D.C. and payable to the order of the collecting bank, copies to be used as follows:

No's 1, 2 and 3 to collecting bank—

No. 1 to be retained by the collecting bank for its own record

No. 2 to be forwarded by the collecting bank to the General Motors depository bank with remittance

No. 3 to be stamped paid by the collecting bank and returned to the Division

No. 4 to drawee (O.D.C.)

No. 5 to Treasurer, General Motors Corporation

- b. If the O.D.C. is a bank not requiring an authorizing bank, the draft will be drawn on and payable to the order of the financing bank, which in this case will also be the collecting bank, copies to be used as follows:

No's 1, 2, 3 and 4 to collecting bank—

No's 1 and 4 to be retained by the collecting bank for its own record

No. 2 to be forwarded by the collecting bank to the General Motors depository bank with remittance

No. 3 to be stamped paid by the collecting bank and returned to the Division

No. 5 to Treasurer, General Motors Corporation



- c. Additional copies of drafts will be used in accordance with the individual requirements of each Division.
- d. The date on all such drafts will be the date of execution.

## 2. *Bill of Sale and Invoice*

The bill of sale will be made in favor of the O.D.C., as grantee. The invoice will reflect the sale to the O.D.C., as grantee. One copy of each will be forwarded with the sight draft to the collecting bank. One copy of the invoice will be forwarded direct to the dealer. Additional copies of the invoice will be used in accordance with the individual requirements of each Division. Both the bill of sale and invoice will be dated as of date of execution and show separately the date of shipment.

On shipments to states which require a manufacturer's certificate of origin, the certificate of origin will be forwarded with the sight draft to the collecting bank.

On rail shipments, a straight bill of lading will be forwarded direct to the dealer.

Upon receipt of copy of the sight draft stamped paid by the collecting bank, the Division will debit Central Office with the amount of the payment.

Follow-up by the Divisions in the case of non advice of payment from or delinquent payment on the part of, the collecting bank must necessarily be prompt in view of the fact that the product will be in the dealer's possession.

When it becomes desirable for a finance company in isolated cases to arrange for delivery of cars at the Division's zone office, warehouse, factory or assembly plant, without resorting to the regular draft payment procedure through the authorizing bank, payment may be effected by the finance company by means of a certified check or bank cashier's check and the finance company making such payment will receive, on the basis of the Dealer's Authorization For Financing, a bill of sale, invoice and, if required, a certificate of origin. Payment may be effected by a bank in such cases by means of a bank draft and the bank will likewise receive a bill of sale, invoice and, if required, a certificate of origin. No sight draft will be drawn in such transactions.

It should be noted that in the case of deliveries to dealers at the zone office, warehouse, factory or assembly plant, the responsibility for protecting the O.D.C.'s interest in connection with advances to the dealer rests entirely with the O.D.C. without any liability to the Division.

Discontinuance of a wholesale financing arrangement may, when necessary, be effected by the Division without notice to the O.D.C. In such instances the dealer should be notified that orders specifying the use of the O.D.C. will not be acceptable.

Exhibit I-A

**DEALER'S AUTHORIZATION FOR FINANCING**  
(Finance Company)

----- Division  
General Motors Corporation  
(Address)

Gentlemen :

We have arranged with (name), herein called the "Finance Company," of (address), to pay you in full for all new motor vehicles and chassis hereafter shipped or delivered to us in fulfillment of orders placed with you by us either at the factory or one of your zone offices where such orders specify wholesale financing through such finance company.

Accordingly, we hereby authorize you to transfer to Finance Company your title in and to such motor vehicles and chassis upon full payment therefor by the Finance Company for our account.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named Finance Company is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to us, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

The Finance Company will confirm this arrangement and complete the necessary details in regard thereto.

We understand that this arrangement shall in no way relieve us of our primary obligation under the terms of our Selling Agreement with you to pay for all cars delivered to us or for our account, in the event payment is not made for our account as provided for by this arrangement.

Very truly yours

-----  
(Dealer Firm Name)

By -----  
(Title of Officer)

Exhibit I-B

**DEALER'S AUTHORIZATION FOR FINANCING  
(Bank)**

..... Division  
General Motors Corporation  
(Address)

Gentlemen:

We have arranged with (name), herein called "Bank," of (address), to pay you in full for all new motor vehicles and chassis hereafter shipped or delivered to us in fulfillment of orders placed with you by us either at the factory or one of your zone offices where such orders specify wholesale financing through such bank.

Accordingly, we hereby authorize you to transfer to the Bank your title in and to such motor vehicles and chassis upon full payment therefor by the Bank for our account.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named Bank is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to us, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

The Bank will confirm this arrangement and complete the necessary details in regard thereto.

We understand that this arrangement shall in no way relieve us of our primary obligation under the terms of our Selling Agreement with you to pay for all cars delivered to us or for our account, in the event payment is not made for our account as provided for by this arrangement.

Very truly yours

.....  
(Dealer Firm Name)

By.....  
(Title of Officer)

Exhibit II-A

FINANCE COMPANY COMMITMENT ON WHOLESALE  
SHIPMENTS (SINGLE DEALER)

(Letterhead of Finance Company Showing Name and Address)

.....Division

General Motors Corporation

(Address)

Re: Dealer ..... of .....  
Firm Name City State

Gentlemen:

We have made arrangements whereby the above-named dealer may finance through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us payable at the (finance company's bank) in (city, state) for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at the above-named bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

For your further assurance in connection with the foregoing, we have caused the above-named bank to execute and forward to you authorization authorizing you to draw sight drafts on us accordingly which will be honored by said bank.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named bank is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF FINANCE COMPANY

By.....  
Title of Officer

Exhibit II-A-1

**BANK AUTHORIZATION WITH RESPECT TO FINANCE COMPANY  
COMMITMENT ON WHOLESALE SHIPMENTS (SINGLE DEALER)**

**(Letterhead of Bank Showing Name and Address)**

.....Division  
General Motors Corporation  
(Address)

Re: Dealer ..... of .....  
Firm Name City State

Finance Company ..... of .....  
Name City State

Gentlemen:

This has reference to the above dealer's letter of authorization to you and the above finance company's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of finance company).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of finance company) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealer in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of finance company) your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named finance company is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

**NAME OF BANK**

By.....  
Title of Officer

Exhibit II-B

**FINANCE COMPANY COMMITMENT ON WHOLESALE  
SHIPMENTS (MULTIPLE DEALER)**

(Letterhead of Finance Company Showing Name and Address)

.....Division  
General Motors Corporation  
(Address)

Gentlemen:

We have made arrangements whereby the dealers whose names appear in Exhibit A hereto attached and made a party hereof may finance through us their purchases of new motor vehicles and chassis from you. Confirming the letters of authorization delivered to you by the above dealers in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to such dealers, or any of them, in fulfillment of orders placed by such dealers with you either at the factory or one of your zone offices where such orders specify wholesale financing through us.

In furtherance of this commitment we hereby authorize you to draw sight drafts on us payable at the (finance company's bank) in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped to such dealers or any of them in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at the above named bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the state of any of such dealers.

For your further assurance in connection with the foregoing, we have caused the above named bank to execute and forward to you authorization authorizing you to draw sight drafts on us accordingly which will be honored by said bank.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof in whole or in part by us or the above named bank is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective notwithstanding receipt of such notice of suspension or revocation with respect to all such motor vehicles and chassis delivered to the above named dealers, or any of them, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF FINANCE COMPANY

By.....  
Title of Officer

Exhibit II-B-1

**BANK AUTHORIZATION WITH RESPECT TO FINANCE COMPANY  
COMMITMENT ON WHOLESALE SHIPMENTS  
(MULTIPLE DEALER)**

(Letterhead of Bank Showing Name and Address)

.....Division  
General Motors Corporation  
(Address)

Re: Finance Company ..... of .....  
Name City State

Gentlemen:

This has reference to the letters of authorization delivered to you by the dealers whose names appear in Exhibit A hereto attached and made a part hereof and in respect of the above finance company's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealers, or any of them, in fulfillment of orders placed by such dealers or any of them with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of finance company).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of finance company) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealers or any of them in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of any such day; and we hereby agree to pay each of such sight drafts promptly on presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of finance company) your title in and to such motor vehicles and chassis and by certificate of origin if required by the state of the said dealers or any of them.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof in whole or in part by us or the above named finance company is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the said dealers hereinabove referred to, or any of them, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By.....  
Title of Officer

Exhibit II-C

**BANK COMMITMENT ON WHOLESALE SHIPMENTS  
(SINGLE DEALER)**

(Letterhead of Bank Showing Name and Address)

.....Division

General Motors Corporation  
(Address)

Re: Dealer ..... of .....  
City State

Gentlemen:

We have made arrangements whereby the above-named dealer may pay through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify payment through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By.....  
Title of Officer



Exhibit II-C-1

**LOCAL BANK COMMITMENT ON WHOLESALE SHIPMENTS  
WHERE ADDITIONAL BANK AUTHORIZATION IS TO BE  
OBTAINED WITH RESPECT THERETO (SINGLE DEALER)**

(Letterhead of Bank Showing Name and Address)

..... Division  
General Motors Corporation  
(Address)

Re: Dealer ..... of .....  
Firm Name City State

Gentlemen:

We have made arrangements whereby the above-named dealer may pay through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby assure payment in full to you of the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify payment through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us payable at ..... for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby assure payment of each of such sight drafts promptly upon presentation thereof at ..... accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By .....  
Title of Officer

Exhibit II-C-2

**BANK AUTHORIZATION WITH RESPECT TO LOCAL BANK  
COMMITMENT ON WHOLESALE SHIPMENTS (SINGLE DEALER)**

(Letterhead of Bank Showing Name and Address)

..... Division

General Motors Corporation

(Address)

Re: Dealer ..... of .....  
Firm Name City State

Local Bank ..... of .....  
Name City State

Gentlemen:

This has reference to the above dealer's letter of authorization to you and the above local bank's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of local bank).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of local bank) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealer in a total sum, however, not exceeding \$ ..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of local bank) your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named local bank is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By .....  
Title of Officer

Exhibit II-D

**BANK COMMITMENT ON WHOLESALE SHIPMENTS  
(MULTIPLE DEALER)**

(Letterhead of Bank Showing Name and Address)

.....Division  
General Motors Corporation  
(Address)

Gentlemen :

We have made arrangements whereby the dealers whose names appear in Exhibit A hereto attached and made a part hereof may finance through us their purchases of new motor vehicles and chassis from you. Confirming the letters of authorization delivered to you by the above dealers in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to such dealers, or any of them, in fulfillment of orders placed by such dealers with you either at the factory or one of your zone offices where such orders specify wholesale financing through us.

In furtherance of this commitment we hereby authorize you to draw sight drafts on us for the amount of each invoice covering such motor vehicles and chassis shipped to such dealers or any of them in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at the above named bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the state of any of such dealers.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective notwithstanding receipt of such notice of suspension or revocation with respect to all such motor vehicles and chassis delivered to the above named dealers, or any of them, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By.....  
Title of Officer

Exhibit II-D-1

**LOCAL BANK COMMITMENT ON WHOLESALE SHIPMENTS  
WHERE ADDITIONAL BANK AUTHORIZATION IS TO BE  
OBTAINED WITH RESPECT THERETO (MULTIPLE DEALER)**

(Letterhead of Bank Showing Name and Address)

\_\_\_\_\_ Division  
General Motors Corporation  
(Address)

Gentlemen:

We have made arrangements whereby the dealers whose names appear in Exhibit A hereto attached and made a part hereof may pay through us their purchases of new motor vehicles and chassis from you. Confirming the letters of authorization delivered to you by the above dealers in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to such dealers, or any of them, in fulfillment of orders placed by such dealers with you either at the factory or one of your zone offices where such orders specify wholesale financing through us.

In furtherance of this commitment we hereby authorized you to draw sight drafts on us payable at the (bank) in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped to such dealers or any of them in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at the above named bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the state of any of such dealers.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above named bank is received by (zone office) provided, nevertheless, that this commitment and authorization shall remain effective notwithstanding receipt of such notice of suspension or revocation with respect to all such motor vehicles and chassis delivered to the above named dealers, or any of them, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to discontinue shipments on this basis at any time at your sole discretion and without notice.

**NAME OF BANK**

By \_\_\_\_\_  
Title of Officer

Exhibit II-D-2

**BANK AUTHORIZATION WITH RESPECT TO LOCAL BANK  
COMMITMENT ON WHOLESALE SHIPMENTS  
(MULTIPLE DEALER)**

(Letterhead of Bank Showing Name and Address)

.....Division  
General Motors Corporation  
(Address)

Re: Local Bank ..... of .....  
Name City State

Gentlemen:

This has reference to the letters of authorization delivered to you by the dealers whose names appear in Exhibit A hereto attached and made a part hereof and in respect of the above local bank's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealers, or any of them, in fulfillment of orders placed by such dealers or any of them with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of local bank).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of local bank) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealers or any of them in a total sum, however, not exceeding \$..... in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of any such day; and we hereby agree to pay each of such sight drafts promptly on presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of local bank) your title in and to such motor vehicles and chassis and by certificate of origin if required by the state of the said dealers or any of them.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above named local bank is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the said dealers hereinabove referred to, or any of them, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By.....  
Title of Officer

Exhibit II-E

FINANCE COMPANY REPURCHASE OPTION AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 195\_\_\_\_, by and between \_\_\_\_\_, hereinafter called "Finance Company," and \_\_\_\_\_ Division, General Motors Corporation, hereinafter called "( \* ),"

WITNESSETH:

WHEREAS, Finance Company is regularly engaged in financing at wholesale the shipment of ( \* ) motor vehicles by ( \* ) to certain authorized ( \* ) dealers; and

WHEREAS, Finance Company is aware of the danger to the good-will of ( \* ) and ( \* ) dealers that may arise in the event that motor vehicles so financed are repossessed and sold to or through others than authorized ( \* ) dealers and desires to protect the good-will in the foregoing regard of those ( \* ) dealers specifically with whom it has arrangements for financing such motor vehicles at wholesale; and

WHEREAS, Finance Company further desires, so far as may be practicable and desirable in the opinion of ( \* ), to make regular arrangements with ( \* ) for the repurchase of motor vehicles so financed and repossessed for any reason in order that Finance Company may thereby conveniently protect and liquidate its interests in such motor vehicles; and

WHEREAS, ( \* ) desires to enter into such arrangements with Finance Company;

NOW, THEREFORE, in consideration of the premises and of other good and valuable considerations exchanged between the parties, receipt whereof by each of them is hereby acknowledged, it is agreed as follows:

1. Finance Company hereby gives to ( \* ) the option to repurchase from it every undamaged ( \* ) motor vehicle of current model and body type, either new or which may be classifiable as new by ( \* ), which may be repossessed by Finance Company in the course of its regular business of financing the same at wholesale for authorized ( \* ) distributors and dealers, the price to be paid by ( \* ) for each such motor vehicle to be the net cost thereof, including transportation charges, to the particular distributor or dealer originally purchasing the same from ( \* ) as evidenced by the factory invoice covering such motor vehicle.

2. Accordingly, Finance Company shall give ( \* ) written notice of repossession of each such motor vehicle and offer the same to ( \* ) for repurchase as aforesaid within ten (10) days after repossession. ( \* ) shall thereafter repurchase any such motor vehicle, which is new or classifiable as new, in any case where ( \* ) deems the same practicable and desirable, provided, however, that in all cases ( \* ) shall give Finance Company notice of its decision with respect to repurchase within ten (10) days after receipt from Finance Company of notice of repossession.

In the event of ( \* )'s failure to give notice of its decision with respect to repurchase as thus required, ( \* ) shall repurchase from Finance Company any such repossessed motor vehicle, which is new or classifiable as new, on the basis set forth in paragraph 1 above upon the written request of Finance Company delivered to ( \* ) within thirty (30) days after repossession, but ( \* ) shall have no other or further liability to Finance Company.

Exhibit II-E  
(cont'd)

3. This Agreement shall continue in force unless and until terminated by either party upon ten (10) days' written notice delivered to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

\_\_\_\_\_  
(Name of Finance Company)By \_\_\_\_\_  
(Name and Title of Officer)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
General Motors Corporation DIVISION

By \_\_\_\_\_

WITNESS:

\_\_\_\_\_

(\*) Insert name of line of cars.

*(This form to be submitted in triplicate)*

Exhibit II-F

BANK REPURCHASE OPTION AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 195\_\_\_\_, by and between \_\_\_\_\_, hereinafter called "Bank" and \_\_\_\_\_ Division, General Motors Corporation, hereinafter called "( \* ),"

WITNESSETH :

WHEREAS, Bank is regularly engaged in financing at wholesale the shipment of ( \* ) motor vehicles by ( \* ) to certain authorized ( \* ) dealers; and

WHEREAS, Bank is aware of the danger to the good-will of ( \* ) and ( \* ) dealers that may arise in the event that motor vehicles so financed are repossessed and sold to or through others than authorized ( \* ) dealers and desires to protect the good-will in the foregoing regard of those ( \* ) dealers specifically with whom it has arrangements for financing such motor vehicles at wholesale; and

WHEREAS, Bank further desires, so far as may be practicable and desirable in the opinion of ( \* ), to make regular arrangements with ( \* ) for the repurchase of motor vehicles so financed and repossessed for any reason in order that Bank may thereby conveniently protect and liquidate its interests in such motor vehicles; and

WHEREAS, ( \* ) desires to enter into such arrangements with Bank;

NOW, THEREFORE, in consideration of the premises and of other good and valuable considerations exchanged between the parties, receipt whereof by each of them is hereby acknowledged, it is agreed as follows:

1. Bank hereby gives to ( \* ) the option to repurchase from it every undamaged ( \* ) motor vehicle of current model and body type, either new or which may be classifiable as new by ( \* ), which may be repossessed by Bank in the course of its regular business of financing the same at wholesale for authorized ( \* ) distributors and dealers, the price to be paid by ( \* ) for each such motor vehicle to be the net cost thereof, including transportation charges, to the particular distributor or dealer originally purchasing the same from ( \* ) as evidenced by the factory invoice covering such motor vehicle.

2. Accordingly, Bank shall give ( \* ) written notice of repossession of each such motor vehicle and offer the same to ( \* ) for repurchase as aforesaid within ten (10) days after repossession. ( \* ) shall thereafter repurchase any such motor vehicle, which is new or classifiable as new, in any case where ( \* ) deems the same practicable and desirable, provided, however, that in all cases ( \* ) shall give Bank notice of its decision with respect to repurchase within ten (10) days after receipt from Bank of notice of repossession.



Exhibit II-F  
(cont'd)

In the event of ( \* )'s failure to give notice of its decision with respect to repurchase as thus required, ( \* ) shall repurchase from Bank any such repossessed motor vehicle, which is new or classifiable as new, on the basis set forth in paragraph 1 above upon the written request of Bank delivered to ( \* ) within thirty (30) days after repossession, but ( \* ) shall have no other or further liability to Bank.

3. This Agreement shall continue in force unless and until terminated by either party upon ten (10) days' written notice delivered to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

\_\_\_\_\_  
(Name of Bank)

By \_\_\_\_\_  
(Name and Title of Officer)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
General Motors Corporation

DIVISION

By \_\_\_\_\_

WITNESS:

\_\_\_\_\_

(\*) Insert name of line of cars.

*(This form to be submitted in triplicate)*

Exhibit III-A

RESPONSE TO INQUIRY FROM FINANCE COMPANY OR BANK  
(to be in the form of a printed letter)

Gentlemen:

In reply to your recent inquiry, we enclose herewith procedure for effectuating payment to us for new ( \* ) motor vehicles and chassis purchased from us by ( \* ) dealers where the wholesale financing of such vehicles and chassis is handled by you for such dealers.

Very truly yours

(\*) Insert name of line of cars.

RESPONSE TO INQUIRY FROM DEALER  
RE WHOLESALE FINANCING BY FINANCING COMPANY

Gentlemen:

In reply to your recent inquiry, we enclose herewith procedure for effectuating payment to us for new ( \* ) motor vehicles and chassis purchased from us by you where the wholesale financing of such vehicles and chassis is to be handled for you by the finance company mentioned in your letter of recent date.

Very truly yours

(\*) Insert name of line of cars.

Exhibit III-C

RESPONSE TO INQUIRY FROM DEALER  
RE WHOLESALE FINANCING BY A BANK

Gentlemen:

In reply to your recent inquiry, we enclose herewith procedure for effectuating payment to us for new ( \* ) motor vehicles and chassis purchased from us by you where the wholesale financing of such vehicles and chassis is to be handled for you by the bank mentioned in your letter of recent date.

Very truly yours

(\*) Insert name of line of cars.



# PROCEDURE FOR PAYMENT OF WHOLESALE SHIPMENTS

**SEPTEMBER 15, 1950**

•

**CHEVROLET MOTOR DIVISION  
GENERAL MOTORS CORPORATION**

**GSO-1**

PAYMENT PROCEDURE FOR FINANCE COMPANIES AND BANKS

The procedure outlined herein is for effectuating payment to Chevrolet Motor Division, General Motors Corporation, by finance companies and banks engaging in wholesale financing of new cars and trucks for Chevrolet dealers. It provides for direct dealing between the financing organization and Chevrolet Motor Division, hereinafter referred to as Chevrolet, to the extent that title in and to the financed product will pass directly from Chevrolet to the financing organization.

The required action on the part of the dealer and finance company or bank in establishing arrangements for such transactions is set forth under the heading PRELIMINARY ARRANGEMENTS. The details of the actual transaction, after arrangements have been completed, are set forth under the heading SETTLEMENT PROCEDURE.

It will be observed that this is a simple means by which finance companies and banks may initiate the financing process with respect to new cars for Chevrolet dealers directly at the point of origin of shipment. The responsibility of protecting the financing organization's interest in products shipped to the dealer will depend, of course, entirely upon the financing organization's own arrangements with the dealer.

PRELIMINARY ARRANGEMENTS

Essential to all arrangements for effectuating payment for financed products will be a dealer's authorization for financing and a commitment by the financing organization. The required forms for this purpose are shown on pages 5, 6, 7 and 8.

The dealer's authorization authorizes Chevrolet to transfer to the designated finance company or bank title to the financed product upon payment for the dealer's account.

Exhibit III-D  
(cont'd)

The commitment by the financing organization authorizes Chevrolet to draw a sight draft on the financing organization for the invoiced amount of the shipment (when the dealer's order specifies the use of such financing organization), the latter agreeing to pay such drafts upon presentation.

Where the financing is by a finance company, the latter's commitment must be supported by an authorization of a bank designated by it with the concurrence of Chevrolet. Where the financing is by a bank directly, the authorization of an additional bank will similarly be required in the discretion of Chevrolet depending on the capitalization of the financing bank, the potential number of cars that may be involved in the financing arrangement plus cars in transit and other credit factors deemed appropriate for consideration by Chevrolet in the circumstances in each case. The required forms for this purpose are shown on pages 9 and 10.

The dealer's authorization continues in effect until written notice of suspension or revocation by the dealer or the financing organization is received by Chevrolet's zone office. The commitment by the financing organization continues in effect until written notice of suspension or revocation by the financing organization or the authorizing bank is received by Chevrolet's zone office.

The dealer's authorization, the commitment by the financing organization and the bank authorization remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to products delivered to the dealer, in transit, in the possession or custody of a carrier or assigned by Chevrolet at the plant for delivery to a carrier, within twenty-four ((24) hours (excluding Saturdays, Sundays and holidays) after receipt by Chevrolet's zone office of such notice.



SETTLEMENT PROCEDURE

Upon each shipment where the dealer specifies wholesale financing through the financing organization, a sight draft will be drawn by Chevrolet on the financing organization for the invoiced amount of the shipment and forwarded by mail to the authorizing bank for payment and remittance to the General Motors depository bank designated on the face of the draft.

The sight draft will be accompanied by a bill of sale in favor of the financing organization, an invoice reflecting the sale to the financing organization as grantee and, if required, a certificate of origin. Upon payment of the draft, the authorizing bank will deliver these documents to the financing organization.

A copy of the sight draft will be forwarded by Chevrolet direct to the financing organization as advice of presentation at the authorizing bank.

Payment and remittance by the authorizing bank must necessarily be prompt in view of the fact that the financed product will be delivered to the carrier by Chevrolet prior to the drawing of the sight draft. Recurring delay in payment will be deemed sufficient cause for the suspension or discontinuance by Chevrolet of shipments on this basis.

When it becomes desirable for the financing organization in isolated cases to arrange for delivery of cars at a Chevrolet zone office, warehouse, factory, or assembly plant without resorting to the regular draft payment procedure through the authorizing bank, payment by a finance company may be effected by means of a certified check or bank cashier's check. Similarly, payment by a bank may be effected by means of a bank draft. The financing organization making such payment will receive on the basis of the dealer's authorization, a bill of sale, invoice and, if required, a certificate of origin. No sight draft will be drawn in such transactions.

**Exhibit III-D**  
**(cont'd)**

It should be noted that in the case of such special transactions, the responsibility for protecting the financing organization's interests in connection with advances to the dealer rests entirely with the financing organization and Chevrolet will not be involved in any way with respect thereto.

To assist the financing organization in the ready liquidation of its interests in financed vehicles that may be repossessed and also in order to protect the good-will of the public towards Chevrolet and Chevrolet dealers with regard to repossessed vehicles which may ultimately reach the public, Chevrolet has prepared a repurchase option agreement which it requests the financing organization to execute. The required form for this purpose is shown on pages 11 and 12.

The agreement provides that the financing organization will give the Chevrolet zone office under which the dealer operates, written notice of any repossession within ten (10) days after repossession takes place. Chevrolet zone office will, in turn, give the financing organization notice of its decision with respect to repurchase within ten (10) days after receipt of the financing organization's notice of repossession. Chevrolet will repurchase any such motor vehicle, which is new or which may be classifiable as new by Chevrolet, whenever Chevrolet deems the same practicable and desirable, although Chevrolet may be required by the financing organization to repurchase if Chevrolet fails to give the ten (10) day notice mentioned above.

The repurchase agreement between the financing organization, on the one hand, and Chevrolet, on the other hand, will continue in effect unless and until terminated by the financing organization or by Chevrolet upon ten (10) days' written notice.

Exhibit III-D  
(cont'd)DEALER'S AUTHORIZATION FOR FINANCINGChevrolet Motor Division  
General Motors Corporation

Gentlemen:

We have arranged with (name), herein called the "Financing Organization," of (address) to pay you in full for all new motor vehicles and chassis hereafter shipped or delivered to us in fulfillment of orders placed with you by us either at the factory or one of your zone offices where such orders specify wholesale financing through such financing organization.

Accordingly, we hereby authorize you to transfer to Financing Organization your title in and to such motor vehicles and chassis upon full payment therefor by the Financing Organization for our account.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named Financing Organization is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to us, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

The Financing Organization will confirm this arrangement and complete the necessary details in regard thereto.

We understand that this arrangement shall in no way relieve us of our primary obligation under the terms of our Selling Agreement with you to pay for all cars delivered to us or for our account, in the event payment is not made for our account as provided for by this arrangement.

Very truly yours

---

 (Dealer Firm Name)By 

---

 (Title of Officer)(Dealer should use own letterhead  
and reproduce exactly as shown)

Exhibit III-D  
(cont'd)

FINANCE COMPANY COMMITMENT ON WHOLESALE SHIPMENTS

(Letterhead of Finance Company Showing Name and Address)

Chevrolet Motor Division  
General Motors Corporation

Re: Dealer \_\_\_\_\_ of \_\_\_\_\_  
Firm Name City State

Gentlemen:

We have made arrangements whereby the above-named dealer may finance through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us payable at the (finance company's bank) in (city, state) for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$\_\_\_\_\_ in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at the above-named bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

For your further assurance in connection with the foregoing, we have caused the above-named bank to execute and forward to you authorization authorizing you to draw sight drafts on us accordingly which will be honored by said bank.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named bank is received by (some office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (some office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF FINANCE COMPANY

By \_\_\_\_\_  
Title of Officer

Exhibit III-D  
(cont'd)BANK COMMITMENT ON WHOLESALE SHIPMENTS

(Letterhead of Bank Showing Name and Address)

Chevrolet Motor Division  
General Motors CorporationRe: Dealer \_\_\_\_\_ of \_\_\_\_\_  
Firm Name City State

Gentlemen:

We have made arrangements whereby the above-named dealer may pay through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby agree to pay in full to you the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify payment through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$ \_\_\_\_\_ in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipment on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By \_\_\_\_\_  
Title of Officer

Exhibit III-D  
(cont'd)

LOCAL BANK COMMITMENT ON WHOLESALE SHIPMENTS WHERE ADDITIONAL  
BANK AUTHORIZATION IS TO BE OBTAINED WITH RESPECT THEREIN

(Letterhead of Bank Showing Name and Address)

Chevrolet Motor Division  
General Motors Corporation

Re: Dealer \_\_\_\_\_ of \_\_\_\_\_  
Firm Name City State

Gentlemen:

We have made arrangements whereby the above-named dealer may pay through us his purchase of new motor vehicles and chassis from you. Confirming the above dealer's letter of authorization to you in connection therewith, we hereby assure payment in full to you of the invoice amount of all new motor vehicles and chassis hereafter shipped or delivered to the above dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify payment through us.

In furtherance of this commitment we hereby authorize you to draw a sight draft on us payable at \_\_\_\_\_ for the amount of each invoice covering such motor vehicles and chassis in a total sum, however, not exceeding \$ \_\_\_\_\_ in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby assure payment of each of such sight drafts promptly upon presentation thereof at \_\_\_\_\_ accompanied by the invoice and bill of sale transferring to us your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This commitment and authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us is received by (zone office), provided, nevertheless, that this commitment and authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By \_\_\_\_\_  
Title of Officer

Exhibit III-D  
(cont'd)

BANK AUTHORIZATION WITH RESPECT TO FINANCE  
COMPANY COMMITMENT ON WHOLESALE SHIPMENTS

(Letterhead of Bank Showing Name and Address)

Chevrolet Motor Division  
General Motors CorporationRe: Dealer \_\_\_\_\_ of \_\_\_\_\_  
Firm Name City StateFinance Company \_\_\_\_\_ of \_\_\_\_\_  
Name City State

Gentlemen:

This has reference to the above dealer's letter of authorization to you and the above finance company's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of finance company).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of finance company) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealer in a total sum, however, not exceeding \$ \_\_\_\_\_ in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of finance company) your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named finance company is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By \_\_\_\_\_  
Title of Officer

Exhibit III-D  
(cont'd)

BANK AUTHORIZATION WITH RESPECT TO LOCAL  
BANK COMMITMENT ON WHOLESALE SHIPMENTS

(Letterhead of Bank Showing Name and Address)

Chevrolet Motor Division  
General Motors Corporation

Re: Dealer \_\_\_\_\_ of \_\_\_\_\_  
Firm Name City State

Local Bank \_\_\_\_\_ of \_\_\_\_\_  
Name City State

Gentlemen:

This has reference to the above dealer's letter of authorization to you and the above local bank's commitment on wholesale shipments to you with respect to new motor vehicles and chassis hereafter shipped or delivered to said dealer in fulfillment of orders placed by such dealer with you either at the factory or one of your zone offices where such orders specify wholesale financing through (name of local bank).

In furtherance thereof we hereby authorize you to draw a sight draft on (name of local bank) payable at this bank in (city, state) for the amount of each invoice covering such motor vehicles and chassis shipped or delivered to said dealer in a total sum, however, not exceeding \$ \_\_\_\_\_ in any one day, any portion of such total sum available, but unused during any one day, to become automatically cancelled at the end of such day; and we hereby agree to pay each of such sight drafts promptly upon presentation thereof at this bank accompanied by the invoice and bill of sale transferring to (name of local bank) your title in and to such motor vehicles and chassis and by certificate of origin if required by the dealer's state.

This authorization shall continue in full force and effect until written notice of suspension or revocation hereof by us or the above-named local bank is received by (zone office), provided, nevertheless, that this authorization shall remain effective, notwithstanding receipt of such notice of suspension or revocation, with respect to all such motor vehicles and chassis delivered to the above-named dealer, in transit, in the possession or custody of a carrier or assigned by you at your plant for delivery to a carrier, within twenty-four (24) hours (excluding Saturdays, Sundays and holidays) after receipt by (zone office) of such notice.

We expressly understand that you reserve the right to suspend or discontinue shipments on this basis at any time at your sole discretion and without notice.

NAME OF BANK

By \_\_\_\_\_  
Title of Officer



Exhibit III-D  
(cont'd)REPURCHASE OPTION AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 195\_\_\_\_, by and between \_\_\_\_\_, hereinafter called "Finance Company," and Chevrolet Motor Division, General Motors Corporation, hereinafter called "Chevrolet,"

## WITNESSETH:

WHEREAS, Finance Company is regularly engaged in financing at wholesale the shipment of Chevrolet motor vehicles by Chevrolet to certain authorized Chevrolet dealers; and

WHEREAS, Finance Company is aware of the danger to the good-will of Chevrolet and Chevrolet dealers that may arise in the event that motor vehicles so financed are repossessed and sold to or through others than authorized Chevrolet dealers and desires to protect the good-will in the foregoing regard of those Chevrolet dealers specifically with whom it has arrangements for financing such motor vehicles at wholesale; and

WHEREAS, Finance Company further desires, so far as may be practicable and desirable in the opinion of Chevrolet, to make regular arrangements with Chevrolet for the repurchase of motor vehicles so financed and repossessed for any reason in order that Finance Company may thereby conveniently protect and liquidate its interests in such motor vehicles; and

WHEREAS, Chevrolet desires to enter into such arrangements with Finance Company;

NOW, THEREFORE, in consideration of the premises and of other good and valuable considerations exchanged between the parties, receipt whereof by each of them is hereby acknowledged, it is agreed as follows:

1. Finance Company hereby gives to Chevrolet the option to repurchase from it every undamaged Chevrolet motor vehicle of current model and body type, either new or which may be classifiable as new by Chevrolet, which may be repossessed by Finance Company in the course of its regular business of financing the same at wholesale for authorized Chevrolet distributors and dealers, the price to be paid by Chevrolet for each such motor vehicle to be the net cost thereof, including transportation charges, to the particular distributor or dealer originally purchasing the same from Chevrolet as evidenced by the factory invoice covering such motor vehicle.

2. Accordingly, Finance Company shall give Chevrolet written notice of repossession of each such motor vehicle and offer the same to Chevrolet for repurchase as aforesaid within ten (10) days after repossession. Chevrolet shall thereafter repurchase any such motor vehicle, which is new or classifiable as new, in any case where Chevrolet deems the same practicable and desirable, provided, however, that in all cases Chevrolet's zone office shall give Finance Company notice of its decision with respect to repurchase within ten (10) days after receipt from Finance Company of notice of repossession.

Exhibit III-D  
(cont'd)

In the event of Chevrolet's failure to give notice of its decision with respect to repurchase as thus required, Chevrolet shall repurchase from Finance Company any such repossessed motor vehicle, which is new or classifiable as new, on the basis set forth in paragraph 1 above upon the written request of Finance Company delivered to Chevrolet within thirty (30) days after repossession, but Chevrolet shall have no other or further liability to Finance Company.

3. This Agreement shall continue in force unless and until terminated by either party upon ten (10) days' written notice delivered to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WITNESS:

\_\_\_\_\_  
(Name of Finance Company)

By \_\_\_\_\_

(Name and Title of Officer)

WITNESS:

CHEVROLET MOTOR DIVISION  
General Motors Corporation

By \_\_\_\_\_

(This form to be submitted in triplicate)

Exhibit III-D  
(concl'd)

This brochure will be amended to incorporate the alternative plans represented by Exhibits II-A, II-A-1, II-B, II-B-1, II-C, II-C-1, II-C-2, II-D, II-D-1, II-D-2, E and F.

Exhibit IV

**DUPLICATE CARD ADVICE  
TO TREASURER'S OFFICE**

AUTHORIZING BANK _____ <div style="text-align: center;">(NAME)</div>	ADVICE NO. _____ <div style="text-align: center;">(CITY) (STATE)</div>
FINANCE CO. OR FINANCING BANK _____ <div style="text-align: center;">(NAME)</div>	_____ <div style="text-align: center;">(CITY) (STATE)</div>
DEALER _____ <div style="text-align: center;">(NAME)</div>	_____ <div style="text-align: center;">(CITY) (STATE)</div>
ESTIMATED MAXIMUM INVOICED AMOUNT OF SHIPMENTS: <div style="display: flex; justify-content: space-between;"> <div>ANY ONE DAY</div> <div>\$ _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>FIVE CONSECUTIVE BUSINESS DAYS</div> <div>\$ _____</div> </div>	
<div style="display: flex; justify-content: space-between;"> <div>                             G. M. C. DEPOSITORY BANK _____  <div style="display: flex; justify-content: space-between;"> <div>LOCATION _____</div> <div>(CITY) (STATE)</div> </div> </div> <div>                             REPURCHASE OPTION AGREEMENT RECEIVED:  <div style="display: flex; justify-content: space-around;"> <div>YES <input type="checkbox"/></div> <div>NO <input type="checkbox"/></div> </div> </div> </div>	
DIVISION _____ <div style="text-align: center;">(NAME)</div>	_____ <div style="text-align: center;">(LOCATION)</div>
APPROVED BY TREASURER'S OFFICE _____ <small>GM 1699 (REV. 9-59)</small>	DATE APPROVED _____

<p><b>TO COLLECTING (OR DRAWEE) BANK:</b> PLEASE DETACH AND RETAIN FOR YOUR RECORDS.</p>	<p><b>SIGHT DRAFT</b></p> <p><b>DIVISION</b></p> <p>GENERAL MOTORS CORPORATION MICHIGAN</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">ZONE NO.</td> <td style="width: 50%; padding: 5px;">IDENTIFICATION NO. <b>1</b></td> </tr> </table>	ZONE NO.	IDENTIFICATION NO. <b>1</b>
ZONE NO.	IDENTIFICATION NO. <b>1</b>			
<p style="text-align: center;">_____ 19____</p> <p style="text-align: center;"><b>EXCHANGE AND COLLECTION CHARGES:</b> <b>IF ANY, MUST BE PAID BY DRAWEE</b></p>				
<p><b>AT SIGHT</b> <b>PAY TO THE</b> <b>ORDER OF</b></p> <p style="font-size: small; text-align: center;">AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY; PROCEEDS PENDING REMITTANCE NOT TO BE COMINGLED WITH PAYEE'S FUNDS.</p> <p style="text-align: right;">_____ DOLLARS. \$</p>				
<p><b>TO</b> _____</p> <p style="text-align: right;"><b>DIVISION</b> GENERAL MOTORS CORPORATION BY M. L. PRENTIS, TREAS.</p>				
<p><b>DEALER NAME</b> <b>AND ADDRESS</b></p>				
<p><b>INSTRUCTIONS TO COLLECTING (OR DRAWEE) BANK: FOR COLLECTION AND IMMEDIATE REMITTANCE</b></p> <p style="text-align: center;"><b>IN EXCHANGE, TO</b></p> <p><b>PLEASE ATTACH NO. 2 COPY OF THIS DRAFT TO YOUR REMITTANCE TO THE DEPOSITORY BANK SPECIFIED ABOVE. DELIVER BILL OF SALE AND INVOICE OF SAME IDENTIFICATION NUMBER TO DRAWEE UPON PAYMENT OF THIS DRAFT.</b></p>				

**Exhibit V**  
(cont'd)

<p><b>TO COLLECTING (OR DRAWEE) BANK:</b> PLEASE DETACH AND FORWARD TO DEPOSITORY BANK.</p>	<p style="text-align: center;"><b>SIGHT DRAFT</b></p> <p style="text-align: center;"><b>DIVISION</b></p> <p style="text-align: center;">GENERAL MOTORS CORPORATION MICHIGAN</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">ZONE NO.</td> <td style="width: 50%; padding: 5px;">IDENTIFICATION NO.</td> </tr> <tr> <td style="text-align: center; font-size: 2em;">2</td> <td></td> </tr> </table>	ZONE NO.	IDENTIFICATION NO.	2	
ZONE NO.	IDENTIFICATION NO.					
2						
<p style="text-align: center;">EXCHANGE AND COLLECTION CHARGES. IF ANY, MUST BE PAID BY DRAVEE</p>						
<p>AT SIGHT PAY TO THE ORDER OF _____ 19____</p>						
<p><small>AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY; PROCEEDS PENDING REMITTANCE NOT TO BE COMMINUED WITH PAYEE'S FUNDS.</small></p>						
<p>_____ DOLLARS \$ _____</p>						
<p>TO _____</p>						
<p style="text-align: right;">DIVISION GENERAL MOTORS CORPORATION BY M. L. PRENTIS, TREAS.</p>						
<p><b>DEALER NAME AND ADDRESS</b></p>						
<p><b>INSTRUCTIONS TO COLLECTING (OR DRAVEE) BANK:</b> For Collection and Immediate Remittance</p> <p style="text-align: center;">In Exchange, to</p> <p>Please Attach This No. 2 Copy to Your Remittance to the Depository Bank Specified Above.</p>						
<p><b>INSTRUCTIONS TO DEPOSITORY BANK:</b> Credit to the account of General Motors Corporation, Detroit 2, Michigan. Stamp No. 2 copy Paid showing Date and Teller's Initial, MAILING NO. 2 COPY, AS ADVICE OF CREDIT, to Treasurer, General Motors Corporation, Detroit 2, Michigan.</p>						

Exhibit V  
(cont'd)

TO COLLECTING (OR DRAWEE) BANK: PLEASE FORWARD TO      DIVISION.	SIGHT DRAFT <b>DIVISION</b> GENERAL MOTORS CORPORATION MICHIGAN	ZONE NO.	IDENTIFICATION NO.	<div style="font-size: 2em; font-weight: bold; display: inline-block;">3</div>
<p style="text-align: center;">EXCHANGE AND COLLECTION CHARGES. IF ANY, MUST BE PAID BY DRAWEE</p> <p style="text-align: center;">_____ IS _____</p> <p style="text-align: center;"><b>AT SIGHT PAY TO THE ORDER OF</b></p> <p style="text-align: center; font-size: 0.8em;">AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY; PROCEEDS PENDING REMITTANCE NOT TO BE COMINGLED WITH PAYEE'S FUNDS.</p> <p style="text-align: right;">_____ DOLLARS \$ _____</p> <p style="text-align: right; margin-top: 20px;">TO _____</p> <p style="text-align: right; margin-top: 10px;">DIVISION GENERAL MOTORS CORPORATION BY M. L. PRENTIS, TREAS.</p>				
<p><b>DEALER NAME AND ADDRESS</b></p> <hr/>				
<p><b>INSTRUCTIONS TO COLLECTING (OR DRAWEE) BANK:</b></p> <div style="text-align: center; margin-top: 40px;">       DIVISION.     </div>				
<p>STAMP THIS COPY PAID AND MAIL TO GENERAL MOTORS CORPORATION.</p>				

Exhibit V  
(cont d)

<p><b>NOTICE TO DRAWEES:</b> PLEASE PRESENT TO COLLECTING BANK FOR RECEIPT AND DELIVERY OF BILL OF SALE AND INVOICE.</p>	<p style="text-align: center;"><b>SIGHT DRAFT</b></p> <p style="text-align: center;"><b>DIVISION</b> GENERAL MOTORS CORPORATION MICHIGAN</p>	<p>ZONE NO. _____</p>	<p>IDENTIFICATION NO. _____</p>	<p style="text-align: right; font-size: 2em; font-weight: bold;">4</p>
<p style="text-align: right;">EXCHANGE AND COLLECTION CHARGES, IF ANY, MUST BE PAID BY DRAWEE</p>				
<p style="text-align: center;">_____ 19____</p>				
<p style="text-align: center;"><b>AT SIGHT PAY TO THE ORDER OF</b></p>				
<p style="text-align: center; font-size: 0.8em;">AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY; PROCEEDS PENDING REMITTANCE NOT TO BE COMMINGLED WITH PAYEE'S FUNDS.</p>				
<p>_____ DOLLARS \$ _____</p>				
<p style="text-align: center;">TO _____</p>				
<p style="text-align: center;">DIVISION GENERAL MOTORS CORPORATION BY M. L. PRENTIS, TREAS.</p>				
<p><b>DEALER NAME AND ADDRESS</b></p>				
<p style="text-align: center;"><b>INSTRUCTIONS TO COLLECTING BANK</b></p>				
<p style="text-align: center;">DELIVER BILL OF SALE AND INVOICE OF SAME IDENTIFICATION NUMBER TO DRAWEE UPON PAYMENT OF THIS DRAFT.</p>				



Exhibit V  
(cont'd)

TO ACCOUNTING DEPARTMENT: FORWARD TO TREASURER, G.M.C.	<b>SIGHT DRAFT</b> <b>DIVISION</b> GENERAL MOTORS CORPORATION MICHIGAN	ZONE NO.	IDENTIFICATION NO.	<b>5</b>
<p style="text-align: center;"> <b>EXCHANGE AND COLLECTION CHARGES</b>  <b>IF ANY, MUST BE PAID BY DRAVEE</b> </p> <p style="text-align: center;">         _____ 19____       </p> <p style="text-align: center;"> <b>AT SIGHT</b>  <b>PAY TO THE</b>  <b>ORDER OF</b> </p> <p style="text-align: center;">         AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY; PROCEEDS PENDING REMITTANCE NOT TO BE COMMINLED WITH PAYEE'S FUNDS.       </p> <p style="text-align: center;">         _____ DOLLARS \$       </p> <p style="text-align: center;">         TO _____       </p> <p style="text-align: center;">         DIVISION          GENERAL MOTORS CORPORATION          BY M. L. PRENTIS, TREAS.       </p>				
<p style="text-align: center;"> <b>DEALER NAME</b>  <b>AND ADDRESS</b> </p>				
<p style="text-align: center;"> <b>IN</b> </p> <p style="text-align: center;"> <b>EXCHANGE, TO</b> </p> <p style="text-align: center;"> <b>FOR COLLECTION AND IMMEDIATE REMITTANCE</b> </p>				

Exhibit V  
(concl'd)

CAR DIVISION COPY	<b>SIGHT DRAFT</b> DIVISION GENERAL MOTORS CORPORATION MICHIGAN	ZONE NO.	IDENTIFICATION NO.  <div style="font-size: 2em; font-weight: bold; text-align: center;">6</div>	EXCHANGE AND COLLECTION CHARGES. IF ANY, MUST BE PAID BY DRAWEE  _____ 19____  AT SIGHT PAY TO THE ORDER OF  AS AGENT FOR THE DRAWER FOR COLLECTION AND REMITTANCE ONLY, PROCEEDS PENDING REMITTANCE NOT TO BE COMINGLED WITH PAYEE'S FUNDS.  _____ DOLLARS \$____	TO _____  DIVISION GENERAL MOTORS CORPORATION BY M. L. PRENTIS, TREAS.	DEALER NAME AND ADDRESS  _____ _____ _____
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## EXHIBIT B

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE  
THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED  
STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

## GENERAL MOTORS CORPORATION

GENERAL MOTORS BUILDING

3044 WEST GRAND BOULEVARD

DETROIT 2, MICHIGAN

November 20, 1952

*To All General Motors Dealers:*

Herewith enclosed is a copy of the Final Judgment in the case of *United States of America v. General Motors Corporation and General Motors Acceptance Corporation* which was entered on consent of the parties on July 28, 1952, by Hon. Walter J. La Buy, Judge of the United States District Court for the Northern District of Illinois, Eastern Division. This copy is being sent to you pursuant to Section X of that judgment.

In our desire to comply fully with our obligations under that decree, I ask your earnest cooperation to the extent that you will without delay advise me personally of any situation that may arise (whether through the acts of representatives of either General Motors Corporation, General Motors Acceptance Corporation or both), which you deem to be at variance with the terms of the judgment to the end that steps may be taken immediately to rectify the situation and to prevent its recurrence.

Please detach and return to me in the enclosed envelope the acknowledgment set forth below.

Very truly yours,



HENRY M. HOGAN  
Vice President and General Counsel,  
General Motors Corporation

-----  
Date \_\_\_\_\_ 195\_\_

Receipt of a copy of the FINAL JUDGMENT entered July 28, 1952, by Judge Walter J. La Buy in *United States of America v. General Motors Corporation, et al.*, No. 2177, United States District Court, Northern District of Illinois, Eastern Division, is hereby acknowledged.

\_\_\_\_\_  
(Dealer)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

EXHIBIT C

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

GENERAL MOTORS CORPORATION

GENERAL MOTORS BUILDING

3044 WEST GRAND BOULEVARD

DETROIT 2, MICHIGAN

November 15, 1952

*To all Regional, Zone, City and District Managers and Field Representatives in the Continental United States of the Car Divisions of General Motors Corporation*

*In re:* Termination of litigation between United States and General Motors Corporation over automobile financing.

With this letter I am enclosing a copy of the consent decree entered July 28, 1952, terminating the litigation between the United States and General Motors Corporation regarding automobile financing. It is sent to you pursuant to paragraph X of the decree. You will also find enclosed a memorandum summarizing the terms of the decree and explaining some of the background of the litigation. This memorandum is not intended as a substitute for the decree nor as qualifying or limiting the decree in any respect. It is rather for the purpose of assisting you in understanding the decree and in aiding you in its observance. You should read both documents.

Please detach and return to me in the enclosed envelope the acknowledgment set forth below.

Very truly yours,



HENRY M. HOGAN  
*Vice President and General Counsel,  
General Motors Corporation*

Date ..... 195...

Receipt of a copy of the FINAL JUDGMENT entered July 28, 1952, by Judge Walter J. La Buy in *United States of America v. General Motors Corporation, et al.*, No. 2177, United States District Court, Northern District of Illinois, Eastern Division, is hereby acknowledged.

(Name)

## EXHIBIT D

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

***Memorandum From the General Counsel Explaining the Disposition  
Made of the Antitrust Litigation  
Over Automobile Financing***

The long-standing litigation between the United States Government and General Motors Corporation over automobile financing was terminated on July 28, 1952, by the entry of a consent decree in which the government conceded the right of General Motors Corporation to own a finance company.

The decree, entered upon the consent of the parties and with the approval of the Court, was in connection with the action instituted in the Federal Court, in Chicago, Illinois, on October 4, 1940, as the aftermath of the South Bend litigation.

**Allegations of the Complaint.** It was alleged in the complaint that General Motors Corporation and General Motors Acceptance Corporation had by various means coerced dealers into using the facilities of General Motors Acceptance Corporation and that because of such conduct the Court should compel General Motors Corporation to dispose of the capital stock of General Motors Acceptance Corporation and should forever enjoin it from owning or advertising any finance company.

**The Defense.** After denying all of the substantial allegations of the complaint, the defendants General Motors Corporation, General Motors Acceptance Corporation, and General Motors Sales Corporation (the last of which was subsequently dismissed because of its dissolution), entered upon a program of examining, by deposition, all dealers who were claimed by the government to have been forced to finance through General Motors Acceptance Corporation.

**Consent Decree Negotiations.** Largely as the result of these depositions and, in part, by reason of its own investigation through the Federal Bureau of Investigation, the government concluded that it did not have evidence to substantiate the allegations of the complaint. It therefore approached the defendants with an offer to drop its demand for the divorcement of General Motors Acceptance Corporation, provided the defendants would consent to a decree enjoining their doing certain things. Such a decree was necessary to the government in order for it to retain certain other decrees entered in 1938 against Chrysler Corporation and the Ford Motor Company. Extended negotiations finally resulted in an agreement of the parties upon the language of a decree and although the decree was opposed by attorneys for American Finance Conference, it was approved by the Court, to become effective in 120 days (November 25, 1952).

**Wholesale Plan.** In the course of the settlement negotiations, counsel for General Motors Corporation inquired of the government as to what, if anything, was being done by General Motors Corporation or General Motors Acceptance Corporation that outside finance companies (whose cause the government had been championing) thought was unfair. Counsel were advised that the principal complaint of other finance companies was that there was no procedure by which they could finance cars wholesale at the factory. Although doubting that the matter complained of was of any real significance to the finance companies, counsel for General Motors caused a plan to be prepared so broad as to enable any finance company or bank, upon establishing reasonable credit, to finance cars at wholesale as they left the factory.

Before this plan was put into operation it was submitted informally to counsel for the government and was approved. During the following four years, while it was in effect, the only complaint regarding its operation which came to the attention of the defendants was in the nature of a request by certain of the large finance companies to have General Motors Corporation dis-

criminate in their favor by permitting them to use surety bonds rather than bank guarantees as a means of establishing credit. In the interest of treating all of the companies uniformly, this request was rejected.

After the submission of the proposed consent decree to the Court, a new complaint was made by the attorneys for the American Finance Conference. This was that under the plan it was necessary for a finance company to obtain a separate bank guarantee in connection with the financing of each dealer, whereas the Conference preferred having one guarantee cover several dealers. Even though this complaint seemed to be superficial, counsel for the defendants immediately arranged to have the plan altered in such manner as would make it possible for a finance company to use either individual or combination bank guarantees. The plan, as amended, satisfied the government and is approved by the Court in the consent decree.

**Observance of Decree.** Having obtained this legal approval of its right to own a finance company, General Motors Corporation is desirous not only of carrying out its obligations under the decree, but also of doing everything possible to avoid unfounded accusations of having failed in its bargain. It is important that every responsible representative of General Motors Corporation and of the car divisions, as well as of General Motors Acceptance Corporation, read the decree and be thoroughly familiar with its provisions. Indeed, a finding by the Court at any later date that the decree had been violated, regardless of whether or not the finding was correct, would have very serious consequences.

**Consequence of Contempt Proceedings.** A finding of a violation of any of the basic provisions of the decree would entail the possibility of fine and imprisonment, not only for the parties participating in the infraction but also for the executive officers superior to the offenders. Every unsuccessful competing finance company and every disgruntled or cancelled dealer is a potential source of complaint and it must be recognized that even innocent conduct may, intentionally or unintentionally, be misinterpreted or misconstrued. The car divisions and General Motors Acceptance Corporation should therefore avoid all conduct that may be misconstrued to indicate a violation of the decree.

**Terms of the Decree.** A short summary of the decree will be set forth, not as a substitute for studying its exact terms, but rather to furnish a general conception of its scope. The important paragraphs are IV to VIII, inclusive. The first and third paragraphs of the decree relate to definitions and other formal matters, while paragraphs IX to XII merely provide for publication of the decree and other similar provisions of an administrative nature. The second paragraph directs the officers, directors, agents and employees of the defendant corporations and their divisions to obey the decree.

**Provision With Respect to Wholesale Financing.** Subparagraphs (a) and (b) of paragraph IV of the decree relate to wholesale financing of cars shipped from the factory. They forbid discrimination in favor of General Motors Acceptance Corporation but specifically approve the current wholesale plan, as amended. The plan, as amended, is attached to the decree as an appendix. General Motors Acceptance Corporation may continue its wholesale procedure for financing cars at the factory.

**Leasing Space in Factory or Assembly Buildings.** Subparagraph 4 (c) forbids the leasing of space by General Motors Corporation to General Motors Acceptance Corporation in any manufacturing or assembly plants unless similar space is made available to competitive finance companies. General Motors Acceptance Corporation has never had any space in any manufacturing or assembly plant.

**Information re New or Prospective Dealers.** Subparagraph (d) of paragraph IV states that no plan or procedure may be adopted for the furnishing to General Motors Acceptance Corporation of information concerning new or prospective dealers unless similar information is furnished to competitive finance companies upon written request. At one time General Motors Acceptance Corporation was included in the list who received notice of the appointment of a new dealer. That practice was discontinued some time ago. General Motors is also ordered not to adopt any pro-

cedure, practice or plan for furnishing information concerning dealers to any finance company for the purpose of enabling that finance company to obtain the dealer's finance business.

**Discriminations to Aid Finance Company.** Subparagraphs (e), (f) and (g) of paragraph IV provide that General Motors Corporation shall not, for the purpose of influencing a dealer to patronize any finance company, adopt any practice, procedure or plan for discriminating among its dealers and shall not enter into any agreement with any dealer which requires the dealer to use any particular finance company or any General Motors finance plan or rate of financing. General Motors Corporation is also prohibited from cancelling or terminating any dealer franchise, or threatening to do so, because of the dealer's failure to patronize any particular finance company.

The language of these paragraphs has been intentionally limited in such manner as not to deprive General Motors Corporation of the principle established in the case of *Ewick v. General Motors Corporation*, 181 F. 2d 70 (7th Circuit, 1950), that a dealer may be cancelled for conduct which injures the good will of the car division.

**Joint Visitation for Purpose of Influencing Dealer to Patronize General Motors Acceptance Corporation.** Subparagraph (h) of paragraph IV permits representatives of the manufacturer and of General Motors Acceptance Corporation to be present simultaneously with the dealer. It, however, enjoins their being together with the dealer for the purpose of influencing the dealer to patronize General Motors Acceptance Corporation unless the joint visit is at the written request of the dealer.

Subparagraph (e) of paragraph VI is the counterpart of this provision which is applicable to General Motors Acceptance Corporation.

Perhaps these two subparagraphs will present more of a problem to the field organization than any other provision in the decree. While the joint meeting is illegal only in the event it is for the purpose of influencing a dealer to use General Motors Acceptance Corporation, it must be remembered at all times that anyone with a grudge against either the car divisions or the finance company may be all too glad to take advantage of appearances and to impute an illegal motive even where none existed.

**Exchange of Confidential Information.** Subparagraph (i) of paragraph IV relates to confidential information obtained by car divisions through audits, reports or other contact with dealerships. It permits the gathering of such information for business or statistical purposes. The information may, however, not be used for the purpose of influencing a dealer to patronize General Motors Acceptance Corporation or any other finance company. The decree does not prevent General Motors Acceptance Corporation from obtaining any information it may desire from sources other than General Motors Corporation.

**Advertising by the Manufacturer.** Paragraph V of the decree permits General Motors Corporation to advertise General Motors Acceptance Corporation in its institutional advertising and permits factory branches handling cars at retail to advertise the availability of the services of General Motors Corporation as a means of financing new or used cars offered for sale by their retail stores. The paragraph forbids all other advertising of General Motors Acceptance Corporation by the car divisions.

**Representations by General Motors Acceptance Corporation.** Subparagraphs (a), (b) and (c) of paragraph VI of the decree restrain General Motors Acceptance Corporation from representing to any dealer that General Motors Corporation requires him to patronize General Motors Acceptance Corporation, or that his failure to do so will result in his cancellation, or the loss of any advantage, service or facility furnished by General Motors Corporation. It also prohibits General Motors Acceptance Corporation from representing to any dealer that it can obtain from General Motors Corporation any facility, service or privilege unavailable to any other finance company.

**Tie-In Between Wholesale and Retail Financing.** Subparagraph (d) of paragraph VI provides that General Motors Acceptance Corporation shall not enter into an agreement with any dealer in connection with wholesale financing which requires the dealer to use it for retail financing.

**Capital Loans.** Paragraph VII deals with the subject of capital or long term loans that may be made to a dealer by General Motors Acceptance Corporation on the condition that the dealer will do business on an exclusive basis with General Motors Acceptance Corporation. The decree neither forbids nor sanctions such an agreement. It expressly provides that it shall not be construed as an adjudication either that such an agreement is legal or that it is illegal.

**Conspiracy to Do Forbidden Acts.** Paragraph VIII provides that the defendants shall not, in combination or conspiracy, do anything forbidden by the decree. Thus, representatives of General Motors Corporation and General Motors Acceptance Corporation may not, in combination or conspiracy, do anything which alone they are restrained from doing.

**Copy of Decree to Dealers.** Pursuant to paragraph X of the decree, a copy of the consent decree will be sent to each of the General Motors dealers. Although not required by the decree, it is the intention of General Motors Corporation to furnish each new dealer with a copy of the decree and to request both the present and future dealers to notify the Corporation at once and in writing of any conduct coming to their attention which they consider may be contrary to the provisions of the decree.

HENRY M. HOGAN,  
*Vice President and General Counsel,  
General Motors Corporation*

November 15, 1952.



## EXHIBIT E

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE  
THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED  
STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

# GENERAL MOTORS ACCEPTANCE CORPORATION

GENERAL MOTORS BUILDING

BROADWAY AT 57TH STREET

NEW YORK 19, N. Y.

BRANCHES  
THROUGHOUT  
THE WORLD

EXECUTIVE OFFICES  
CABLE ADDRESS  
GENMOTAC

November 15, 1962

*To all Regional, Branch, District and Territorial Managers of General  
Motors Acceptance Corporation*

*In re: Termination of litigation between United States and  
General Motors Corporation over automobile financing.*

With this letter I am enclosing a copy of the consent decree entered July 28, 1962, terminating the litigation between the United States and General Motors Corporation regarding automobile financing. It is sent to you pursuant to paragraph X of the decree. You will also find enclosed a memorandum summarizing the terms of the decree and explaining some of the background of the litigation. This memorandum is not intended as a substitute for the decree nor as qualifying or limiting the decree in any respect. It is rather for the purpose of assisting you in understanding the decree and in aiding you in its observance. You should read both documents.

Please detach and return to me in the enclosed envelope the acknowledgment set forth below.

Very truly yours,



HENRY M. HOGAN  
General Counsel,

General Motors Acceptance Corporation

Date ..... 196

Receipt of a copy of the FINAL JUDGMENT entered July 28, 1962, by Judge Walter J. La Buy in *United States of America v. General Motors Corporation, et al.*, No. 2177, United States District Court, Northern District of Illinois, Eastern Division, is hereby acknowledged.

.....  
(Name)

EXHIBIT F

SUPPLEMENTAL STATEMENT BY GENERAL MOTORS CORPORATION—HEARING BEFORE THE ANTITRUST SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES HOUSE OF REPRESENTATIVES ON H.R. 71—DATED JULY 24, 1961

DIESEL ELECTRIC LOCOMOTIVES

In 1928 Mr. Kettering was engaged in experimental and research work in the diesel engine field with a view to developing a two-cycle engine. This was a natural extension of internal combustion power research that had been one of the principal activities of the General Motors Research operation since its formation.

While the diesel principle of compression ignition was accepted almost as early as the gasoline engine, the early diesel engines were heavy, cumbersome and sluggish. These product characteristics were generally accepted as being inherent in the application of the principle of diesel power.

Mr. Kettering thought otherwise. It was his opinion that diesel engines then in operation -- to the extent that they were replacing steam engines -- were designed according to steam engine practice and built by steam engine standards. As he expressed it, no one was interested in seeing how a diesel wanted to be built. He was convinced that it was possible to develop a lightweight diesel engine -- the objective being twice the work at half the cost.

Mr. Kettering concentrated on a two-cycle design. By 1930 sufficient progress had been achieved to indicate successful accomplishment of the ultimate objective.

About that time, General Motors was afforded the opportunity of acquiring the Winton Engine Company, which was engaged in the business of producing four-cycle diesel engines of its own design for marine applications and gasoline engines for rail cars. Its operations had been profitable and its facilities were apparently adequate for its purposes. However, it was not tooled up for quantity production. In addition, the Winton management recognized the need for advancing the "state of the art" of diesel design to broaden the fields of application. But under then existing conditions, Winton was in no position to undertake the major expenditures required for long-term research and expansion without any certainty of return.

In view of these factors, and the recognition of them by Winton management and stockholders, the company was available for purchase. General Motors, on the other hand, had progressed sufficiently with its two-cycle diesel development to be interested in developments in the diesel engine industry and in an available medium for application to commercial needs of the engines being designed and developed by Mr. Kettering and his staff. In this back-

ground, negotiations were entered into and resulted in the acquisition of Winton by General Motors.

Shortly thereafter, Electro-Motive Company became available. This company had been designing, selling and servicing gasoline-powered rail cars. The company was not a manufacturer. Winton furnished the engines, the remaining components being acquired from other suppliers. The complete product was assembled by the car builder at the latter's plant. In the early twenties this company operated successfully and profitably. In the late twenties as the price of gasoline increased, gasoline-powered rail cars lost their economic edge over steam engines in the short-haul rail traffic field. Small diesel locomotive engines or switching engines had also come into the field. At the same time the need for higher-powered engines for railroad traffic became increasingly more apparent. Diesel power appeared to be the only answer.

Electro-Motive lacked the required research, engineering and financial staffs to undertake development work in this field. However Electro-Motive had experience with the technical aspects of applying internal combustion power to rail transportation. It had a business experience and working relationship with Winton Engine Company over a period of

years, including the months following the acquisition of Winton by General Motors. With this background and the common interests and objectives of the parties, the acquisition of Electro-Motive by General Motors was a natural result.

By 1933 the Corporation's development of the two-cycle diesel engine had reached a stage which justified the experimental use of these engines for furnishing power for a Chevrolet model assembly plant at the Chicago World's Fair. At this time, after four years of depression, fifty-five railroads were in receivership. These, as well as all other railroads not in receivership, were faced with the problem of improving their earning position through stimulating traffic and reducing costs.

At about that time the Chicago, Burlington & Quincy Railroad Company, which, incidentally, was not in receivership, decided to install this new two-cycle diesel engine as the motive power for a newly-designed streamlined train. On May 26, 1934 this new streamliner made its Dawn to Dusk run from Denver to Chicago in 13 hours 10 minutes at an average speed of 77.6 miles per hour. Thereafter, additional engines were built at the Winton Plant, and the two-cycle diesel engine became a factor in the locomotive field. In 1935 General Motors decided to

erect a factory at LaGrange for the production of locomotives, the engines still being supplied from the Winton plant. The first locomotive was delivered from the LaGrange plant in 1936.

While the new business was launched, it still had its problems and its obstacles. Piston and cylinder head failures presented such serious problems that beds were installed in the first locomotives so that servicemen could ride them around the clock and keep them in operation. Historically, railroads had bought custom built locomotives equipped with different and distinctive devices. No two locomotives were alike. This long established custom or practice was in direct conflict with the principle of standardization which was necessarily a fundamental policy of this new enterprise if it was to attain the success designed for it.

Our competitors in the locomotive field, in promoting their own products, did not overlook our frequent product failures in those early days. The dominant position of the steam locomotive in the railroad industry and the investment therein, as well as in shop and repair facilities, were important negative factors in the consideration by the steam locomotive manufacturers of a venture into the manufacture and

sale of the diesel engine locomotive, an unproven revolutionary product -- particularly with many of the potential customers in receivership.

As time passed sales resistance declined and the merits of the diesel engine acquired greater recognition with the result that constant expansion of facilities was necessary to meet the demand for the product. In 1938, manufacturing plants were erected at LaGrange for the production of diesel engines and electrical equipment.

Looking back after the many years diesel

locomotives have been in service, the advantages of diesel power as compared to steam power, for locomotives, are obvious. The record speaks for itself. But in the early years of the diesel locomotive industry, it was necessary to dramatize these advantages even to prospective customers who were not steam-engine-minded.

Among other sales tools, a method of selling was developed and is in use today, called an economic study. Based on the performance record of diesel electric locomotives of all types that are in service, it was possible to project the economies and return on investment of replacing all steam power with diesel electric equipment. These studies became the standard method of selling in 1946, because a return on investment of upwards of thirty per cent per year could be shown in comparison with steam operations.

Two of the direct economies effected through the use of diesel locomotives are in fuel consumption and repair costs. In 1947, according to the Interstate Commerce Commission reports, the total fuel bill for steam locomotives was about \$582,000,000 for coal and fuel oil combined. Had the work performed by the steam locomotives then in operation been handled by diesel locomotives at the same cost recorded by diesels



then in operation, this fuel bill would have been more than cut in half with resulting savings of \$340,000,000.

During the year 1947 the railroads spent \$527,000,000 on the repair of steam locomotives. Based on the maintenance and repair costs of diesels then in service, forty per cent of this amount, or \$210,000,000, could be transferred from operating expense to earnings by complete dieselization. The combined savings in fuel and repair costs for the year 1947, if the railroads were then completely dieselized, would have totalled \$550,000,000.

When it is recognized that the total earnings of all railroads in 1947 was \$1,078,000,000 before taxes, the magnitude of that possible \$500,000,000 savings can be realized. In addition, other savings recognized at that time as being possible through complete dieselization of the railroads would have resulted from the elimination of coal handling, water towers, ash pits, round houses, expensive back shops and reduced maintenance-of-way expense.

Further comparing the performance of diesel locomotives and steam locomotives, there are other advantages or savings, in some respects, intangible and

indirect. One of the outstanding characteristics of the diesel locomotive is its reliability -- the habit of the diesel passenger locomotive of delivering passengers at their destination "on time". In addition, with these diesel locomotives, greatly increased speeds and shortened time schedules are possible. Cleanliness and the freedom from smoke, cinders and dust are taken for granted by passengers today. Train starts are smoother and the ride is more comfortable.

Similar advantages result from the use of freight diesel power. With high initial tractor effort, starts are smoother and heavier tonnage can be pulled at higher speeds. One of the largest steam locomotives ever built, rated at 7000 h.p., regularly pulled 3300 tons over the Ogden-Green River run. A 6000 h.p. Electro-Motive diesel pulled 4500 tons over the same route and with the same time schedule. Diesel electric freight locomotives average 10,000 to 12,000 miles per month as compared with steam locomotive averages of about 8,000 miles per month. Major repairs of diesel locomotives are infrequent whereas steam locomotives required a thirty-day major overhaul every year. Freight trains are moved by diesel power at a nationwide average of 25 miles per hour compared with the steam locomotive average of 16 miles per hour. The relatively smoother

operation of a freight train moving under diesel power is important when you consider that in the "Nineteen Forties" the railroads' annual bill for damaged lading exceeded \$100,000,000.

All of the foregoing advantages contribute importantly to earnings from both passenger revenue and freight revenue through, first, reduced operating costs and, secondly, increased revenue by reason of improved service. Although we have had unreserved acceptance of diesel locomotives by the railroad industry for the past several years, product improvement by Electro-Motive Division has continued and even accelerated in recent years.

The prewar Electro-Motive diesels of the 1936-1944 period, although still in use and apparently rendering satisfactory service, are, in fact, obsolete. A piston in a 1938 Electro-Motive diesel engine had a useful life of about 75,000 miles. Today, the same sized replacement piston has a life of 1,000,000 miles. It also costs less than the 1938 piston. A 1938 motor required rewinding every 300,000 miles. Today, traction motors are running over 1,000,000 miles without rewinding and their ultimate life is, as yet, unknown. The first

freight locomotive built in 1940 had a 5400 h.p. capacity. A freight locomotive of similar characteristics built by Electro-Motive Division today has 7000 h.p. and has 35 per cent more tractive effort than its prototype.

In fact, improvement in performance through the years has been so rapid that it has kept pace with the rising cost of service and maintenance. Electro-Motive's diesel engine of today operates at approximately the same cost per mile as the earlier diesel electric, in spite of the shrinking purchasing power of the dollar. In addition to incorporating improvements in current production, all of the basic improvements can be applied to diesel electrics produced in earlier years, when they require substantial repairs. Thus, an old diesel electric can be rebuilt and upgraded at substantially less than the cost of a new locomotive and the rebuilt locomotive will actually be better than when it was a new product.

The Research Staff of General Motors Corporation did not discontinue its efforts after it had developed the two-cycle diesel engine. The unit injector has been refined and further developed to satisfactorily handle lower grade fuels. The Research Staff developed detergent additives for lubricating oils necessary with the increase in horsepower in diesel electric

engines. A mechanical filter for lubricating oils developed by Research will improve locomotive operations and reduce lubricating oil cost. A technique for making dies by shell mold casting, developed by Research, is being used by Electro-Motive in its manufacturing processes, as are also chrome plating techniques for cylinder liners and piston rings. Developments for the future, in the area of free piston gasifier, turbine, and nuclear fields, the possibilities of which cannot now be foreseen, are being studied and investigated by the Research Staff. At the same time, continuous use is made of Research testing facilities in Electro-Motive's engineering study of new materials.

Attached is a schedule of deliveries of diesel electric locomotive units in the industry for the period January 1936 through August 1955. (Exhibit A)

During these hearings it has been stated in some instances and inferred in others that General Motors has reached and enjoyed a predominate position in the diesel locomotive field by reason of any one or a combination of the following advantages:

1. The use of General Motors traffic volume to force its diesel power on the railroads

and to sustain a dominant competitive position.

2. General Motors enjoyed an unfair advantage during World War II under the War Production Board Materiel Allocation Regulations.
3. By the end of World War II General Motors, because of the great number of its locomotives owned by the railroads, possessed an advantage, through the standardization on one product for the railroads which was an insurmountable obstacle to its competitors, in the sale of their new post-war diesel locomotive models.
4. General Motors' predominance of the market after World War II when all builders offered a complete line of diesel locomotives resulted from the above factors, and not from the product superiority or the services rendered the railroads by General Motors.

It is an amazing fact that two of the largest builders of locomotives -- each having been in the business more than 100 years and between them having 80 per cent of the business

should have been supplanted by a newcomer with a new product. The significance of their position at any time during the continued growth of the newcomer could not have been obscure to them. It would seem that these old steam locomotive suppliers, with their intimate railroad associations, existing over scores of years, at the outset would have properly analyzed the requirements of the railroads, and the merits of this new revolutionary type of motive power. Certainly as time passed they were in a position to evaluate the growing trend toward diesels by the railroads and to take proper action to protect the preferred position they occupied.

In fact, their position at the time General Motors entered the railroad motive power field with their diesel locomotives was so secure that they virtually enjoyed so-called "captive" markets with individual railroad accounts. At that time each railroad standardized on one builder's locomotive to such an extent, that railroads were identified as accounts of specific locomotive suppliers. For example, the Union Pacific was recognized as an Alco account and the Pennsylvania Railroad as a Baldwin account. (See Exhibit B -- indicating the division of the railroads between the three companies on the above basis.) In fact, the working relationship between

these companies was so close that in one instance (in 1939), one locomotive builder designed a new Mallet locomotive, advertised as the most powerful of its time, called the Yellowstone type. One demonstration unit was built and sold to a railroad which was one of the design builder's historical customers. When a follow-up order for eleven units was indicated, all the design drawings, patterns, etc., were handed over by the design builder to another locomotive builder, who delivered the eleven locomotives to the historical customer of the design builder.

With such a situation is it any wonder that they did not concern themselves over this new little producer with, as they termed it, his new razzle dazzle product.

To repeat, they were dominant in their field. It is a fair inference that they were so presumptuous as to believe that no newcomer could possibly upset their dominant position; they were large industrial companies; they had adequate facilities to design and build any type of locomotive that the railroads required, and they had the finances to carry out any program they desired. In fact, even after the construction of the first diesel locomotive plant by General Motors at LaGrange, Illinois,



their manufacturing facilities were many times greater than this new facility erected by General Motors.

And most important, they were, and would have continued to be, satisfied to stay with the steam locomotive and to ignore the advantages of diesel electric locomotion, which, if not developed and promoted by some newcomer to the industry, would have been lost to the railroads and the country.

This was the situation when General Motors brought out its new diesel locomotive product. General Motors produced the first diesel passenger locomotive in 1934. From then through 1939 General Motors built 100 per cent of the diesel passenger locomotives for the industry, having delivered and having in service some 130 units before the first competitor designed and built a diesel passenger locomotive in 1940.

The first diesel freight locomotive designed and built by General Motors, composed of two units, was completed by Electro-Motive on November 19, 1939. It was in demonstration service on twenty-six United States railroads, operating in heavy freight service for 86,000 miles before being sold in November 1940. Thereafter, Electro-Motive did 100 per cent of the freight

locomotive business until January 1946 when American Locomotive Company produced its first diesel freight locomotive.

Alco indicated by its statements before this committee that they introduced the first diesel switcher locomotive in 1924 while General Motors did not produce its first switcher until after the erection of its first diesel locomotive plant at LaGrange, in 1936. Consequently, it would appear that they had an early advantage to properly determine the values of this new form of motive power.

In contrast with the reasons for General Motors dominating position, as stated by its competitors, actually the greatest competitive advantage the Electro-Motive Division of General Motors enjoyed was the attitude of its competitors. When Mr. Kettering was being questioned by Senator O'Mahoney in a hearing some years ago regarding General Motors percentage of the diesel market, he replied that our greatest competitive advantage is our competitors' belief, "That we are crazy."

Except for the diesel switcher locomotive, they initially placed no faith in the great potential value of this new form of motive power to the railroads. They

believed that steam locomotives would remain supreme. Typical of their attitude are several speeches made by the principal executives of these two large manufacturers.

The following are excerpts from a speech (Exhibit C) delivered by Mr. Robert S. Binkerd, Vice President of the Baldwin Locomotive Works, before the New York Railroad Club in New York City on April 25, 1935:

"Tonight, I propose, as far as our human frailty will permit, to speak without prejudice. I think I am in a position to do so; and when I say this I say it not only on behalf of The Baldwin Locomotive Works, but on behalf of the three recognized locomotive builders in this country. Each of us has the engineering brains and the manufacturing ability to build any kind of a thing that moves on wheels. \* \*

\* \* we want to give that client sound and intelligent advice free from the fads and fancies of any given moment -- advice that ten or fifteen years from now he will have been glad to have received and acted on.

(Underscoring ours).

"Today, we are having quite a ballyhoo about stream-lined, lightweight trains and Diesel locomotives, and it is no wonder if the public feels that the steam locomotive is about to lay down and play dead. Yet over the years certain simple fundamental principles continue to operate. Some time in the future, when all this is reviewed, we will not find our railroads any more Dieselized than they are electrified \* \* \* \*. (Underscoring ours).

\* \* \* \* \*

"The speeds that are being made with these Diesel stream-lined trains are not because of any fundamental characteristics of the Diesel engine, but in spite of them. As I will develop shortly, a fundamental characteristic is a rapid loss of drawbar pull at speed, so that at 70 or 80 miles an hour a Diesel locomotive can hardly exert one-tenth of its starting power. \* \* \* \* \* Do I need to argue that this development cannot possibly be the means for general passenger service to the people of the United States?

"Now let us move to the fundamental considerations which affect the use of Diesel or steam power. As you look up to the upper lefthand corner of Slide No. 2 you see the tractive force curve of a better Diesel locomotive than has yet been built. We designed it, but nobody yet has come forward to pay \$400,000 or \$500,000 which it would cost to build it. This Diesel locomotive has the advantage of two 1975 horsepower engines that weigh only about  $13\frac{1}{2}$  pounds per horsepower. It has the advantage of special and expensive electrical and mechanical equipment designed to overcome, as far as possible, that characteristic loss at speed of power delivered at the rim of the wheel. But notwithstanding all these things you see that at 80 miles an hour this Diesel locomotive has hardly 15 per cent of its original tractive force left.

"When, on the other hand, we turn to the tractive force curve of the Northern Pacific 4-8-4 which we built last year, you will note that it has a tractive force at starting of only 70,000 lbs. But at 80 miles an hour it still has nearly

"one-third of its original tractive force; and in all the working speeds from 30 miles an hour up it has a constant excess of approximately 8,000 lbs. of tractive force. And lastly, note that this steam locomotive, which gives a better tractive force curve at all working road speeds, would be reasonably priced at not more than one-third of what it would cost to build the Diesel locomotive with which it is compared.

"Therefore, the field of probable profitable application of the Diesel locomotive is pretty generally indicated at work speeds not exceeding 10 miles an hour. (Underscoring ours).

"But I also wish to point out with equal clearness that no one can predict with any certainty as to what the maintenance cost of a Diesel locomotive may be over a life of 20 or 25 years. And I do wish to say unequivocally that there is not one scintilla of evidence to justify the claim that a Diesel locomotive of equal weight on drivers can be maintained at a cost as low as that of a steam locomotive of the same age

"after the first year or so. Everything points to the probability of a substantially higher maintenance cost for Diesel locomotives than for equivalent steam locomotives of the same age. The only thing nobody knows is how much higher." (Underscoring ours).

It is important to note that the Burlington Railroad had placed in service its first diesel locomotive designed by General Motors approximately one year before this speech was made.

On April 25, 1938, Mr. W. C. Dickerman, President of The American Locomotive Company, made a speech (Exhibit D) before the Western Railway Club in Chicago, excerpts of which read as follows:

"For a century, as you know, steam has been the principal railroad motive power. It still is and, in my view, will continue to be. (Underscoring ours).

\* \* \* \* \*

"The possibilities of the diesel-electric locomotive are already fixed and known; they are as given above. Not so with the steam locomotive.

"Although it is over one hundred years old, it is still in the process of evolution, development and perfection, is not the same as the steam locomotive of yesterday, and is rapidly adapting itself to the demand for high power and speed.

\* \* \* \* \*

"The diesel engine does not like to be over-  
loaded and shows unmistakably its aversion  
the behavior of pistons, piston rings, etc.,  
etc., while the steam engine is not so fast --  
it graciously responds to overloading \* \* \* \* \*

(Underscoring ours).

"The old iron horse literally creates fire and water. It likes a challenge from youngsters like the electric and diesel-electric, especially in the spring of the year.

"It enjoys a race, is young for its years, simply will not be its age.

"It has made more history than any other mechanical unit in existence and if it could talk, it might say, 'You haven't seen anything yet!'

"Yes, gentlemen, steam marches on!"



It is significant to note that the very moment the President of The American Locomotive Company was advising the assembled executives of United States railroads before the Western Railway Club (April 25, 1938) that steam would be with us forever and Diesel was but a passing fancy, Electro-Motive had General Motors locomotives operating on the following famous high speed trains across the country:

- |                 |   |
|-----------------|---|
| BURLINGTON      | - Pioneer Zephyr, two Twin City Zephyrs, Mark Twain Zephyr, two Denver Zephyrs, Sam Houston Zephyr. |
| UNION PACIFIC   | - City of Portland, two City of San Francisco, two City of Denver, two City of Los Angeles.         |
| SANTA FE        | - Two Super Chiefs, El Capitan, San Diegan, Chicagoan, Kansas Cityan.                               |
| BOSTON AND MAIN | - Flying Yankee   |
| B and O         | - Royal Blue, Abraham Lincoln, Ann Rutledge   |

ILLINOIS CENTRAL - Green Diamond

ROCK ISLAND - Texas Rocket, Peoria Rocket,  
Des Moines Rocket, Kansas City-  
Minneapolis Rockets (two) and  
Denver Rocket.

Nine years after Mr. Dickerman read Diesel out of the picture, a later president of Alco sadly announced that Alco had ceased steam locomotive production and one of his vice presidents gave a statement to the press that they were "not intentionally going out of the steam locomotive business. It is simply a matter of demand. All orders and inquiries for new motive power from domestic railroads are for Diesel-electrics."

All during this period, Baldwin, American and Lima were building steam freight locomotives and even in 1946 were introducing new models of steam locomotives which they claimed would out-perform the diesel, as indicated by their advertisements.

In 1933 one advertisement (Exhibit E) read:

"WE GO ON RECORD"

"Steam has remained the dominating form of motive power throughout over 100 years of

"American Railroading.

" \* \* \* \* \* factors which have kept steam the dominating power in American Railroading for over 100 years, will continue to keep steam the dominating power for railroad transportation for a long, long time to come."

Another advertisement (Exhibit F) of this same company, in the November 9, 1941 issue of the Saturday Evening Post, reads in part as follows:

"HORN OR WHISTLE?"

"DIESEL OR STEAM.... which is the locomotive power for the job? We can't tell--yet. We don't know--now. We won't say--offhand."

Another manufacturer in the October 13, 1945 issue of Railway Age, had an advertisement (Exhibit G) picturing one of their steam locomotives and bearing the caption:

"The MOST for your Dollar"

Again, on December 9, 1945, an advertisement (Exhibit H) of this same company, in Railway Age, bore

the caption:

"STEAM IS STILL SUPREME"

On October 2, 1948, an advertisement (Exhibit I) of this same company appeared in Railway Age with a picture of a steam locomotive and the caption:

"She, too, is truly MODERN"

These were the manufacturers who, the Chief Counsel of your Committee said in his opening remarks, " \* \* \* \* were the historical producers of diesel electric locomotives." These were the manufacturers who would have you believe that they were the leaders in diesel locomotive production but had lost position only because of unfair advantages accruing to, or taken by, General Motors.

This then is the background of the competitive picture.

Looking now to Electro-Motive, when we started diesel locomotive manufacture, we established three firm policies:

- a. We were determined to build a standardized product for sale to all railroads.

- b. By cooperative educational effort we hoped to accomplish together with our railroad customers a complete change in railroad maintenance practices directed towards keeping the locomotive in constant service through a running maintenance program rather than follow the required steam practice of sending the locomotives at scheduled times to the back shop for a several months' period of general overhaul.
- c. We would not tolerate any discussion by anyone in our sales organization in connection with General Motors traffic or reciprocity arrangements.

Referring to the above policies, it has been truthfully said that no two steam locomotives even of the same model were ever built exactly alike. The railroads issued the design specifications for locomotives and their mechanical departments assumed responsibility for such designs. They specified to the builders the type of boiler, fire box, steam cylinders, wheels, frame bed and, in many instances, the source from which the builder should buy

these assemblies. Many railroad mechanical department executives had patents on designs and gadgets and insisted that they be used on their locomotives, regardless of their use by any other railroad. Standardization in steam motive power as such just did not exist.

After the LaGrange plant was completed and we sought to sell our new passenger locomotive, our first and best potential customer was the Santa Fe. In fact, their management had indicated they were prepared to buy some diesel locomotives from us. Their mechanical department in due course arrived at the plant with a large roll of drawings and immediately we were precipitated into a situation which if accepted would destroy the basic concept of our design, manufacturing and operating program. We were certain that our program of standardization once accepted and established would be of inestimable future value to the railroads. We were unsuccessful in our efforts with the Santa Fe and after a few days the railroad officials wrapped up their bundle of drawings and left our plant without placing an order.

Some weeks later their operating Vice President called Mr. Hamilton and inquired if some way couldn't be found to reconcile our differences. Mr. Hamilton replied --

Not at the price of non-standardization but that we would undertake certain operating guarantees which if not fulfilled would permit the railroad to return the locomotives to us. This was accepted and the first important step towards standardization was assured. The railroads today give credit to General Motors for successfully initiating and retaining this standardization policy.

Running maintenance was approached on an equally thorough basis with a continuous school in operation at our plant and two travelling maintenance schools visiting every railroad in the country using our power. Its success is measured by the degree of availability of the product -- or, putting it another way, its continuous usability in actual service, which throughout our diesel locomotive history has ranged between 90 per cent and 95 per cent, a level unheard of in any steam power.

Our position on traffic reciprocity, in the sale of our product, was firmer if possible than on any of our other original policies. In the first place, we could promise nothing. We had no control nor could we promise any preferred position for any railroad or for any other division of General Motors, if for no other reason, because

of our decentralized system of operation. Secondly, and of more importance to us, it was inevitable, we would be hurt most by any dependence on traffic for the sale of our product, because it would act as a crutch, would destroy the integrity of our effort, and would defeat us in our objective of deserving the confidence of the railroads on the sole basis of "Merit of Product". In fact, Electro-Motive Division never had, nor permitted its salesmen to have, information as to General Motors traffic.

Aside from these policies and considerations which are inherently sound and should be determinative of our sales policy, freight reciprocity would have boomeranged. Electro-Motive sells and for many years has sold diesels to all major railroads and practically all other railroads. In addition, all railroads are potential customers. Under these conditions, freight traffic given to one customer is freight traffic lost by another. This is no way to sell diesel locomotives to a customer or a potential customer. As between railroad traffic and truck traffic, the same situation applies for General Motors as a whole, since it is also in the business of making and selling trucks.



During these hearings the Committee counsel several times posed a question of this general character: " \* \* \* \* I believe \* \* \* \* it (General Motors) is the largest shipper of freight in the United States, do you feel that that in any way gave it advantages in selling its locomotives over a company like yours, which do not have so much freight being shipped over the railroads?"

Mr. Vanderbilt, Vice President of Baldwin, replied: "Oh, I think that is true. I think we would be naive to assume that General Motors' tremendous volume of traffic over the railroads does not have a profound influence on railroad purchasing."

Again with Mr. Lewis, Vice President of Alco, Committee counsel posed his question as follows: "Have you encountered in any way the problem of meeting the situation which has been referred to of General Motors being the largest single shipper by rail in the United States, and thus being a customer of the railroads to whom it is trying to sell its products?"

Mr. Lewis replied, "Well, I think with the size of General Motors, I think it is recognized that they must have a tremendous amount of traffic. It may be important in the placing of business. I think of it in this way --

well, it is the facts of life that you might as well look at in that I think that in the business world today you try to help each other."

It has been stated time and time again during this hearing that your Committee is interested only in getting the facts. Yet, has any one or all of the more than 100 railroad presidents responsible for the purchase of our locomotives been called to determine if traffic pressure has been discussed or used in the sale of General Motors locomotives? They know why they chose General Motors diesel locomotives and could give you the facts. We would welcome such an investigation as broad as the Committee wishes to make it.

\* \* \* \* \*

It has been stated by our competitors during this hearing that General Motors received unfair advantage during World War II under War Production Board allocations. In this connection, the Alco Vice President who testified here stated that they had new locomotive designs completed in 1939 and 1940 but could not place them into production because of World War II Government regulations.

The War Production Board directive which placed the locomotive business under Government controls was General Limitation Order L-97, issued April 4, 1942 and signed by J. S. Knowlson, Director of Industry Operations. Thereafter, specific schedules of locomotive production were assigned to the builders by means of letters issued by the War Production Board under General Limitation Order L-97. The first letter, dated May 13, 1942, specified our production schedule from May through November of 1942. It was signed by Mr. Knowlson. It called for all types of engines -- switcher, passenger and freight through August, and freight only for September, October and November. The second letter dated November 25, 1942, gave us our schedule for the first six months of 1943. It was signed by Ernest Kanzler as Director General of Operations for the War Production Board.

It provided no locomotive production for December 1942, or January and February 1943. It gave us a production schedule for locomotives only, from March through June 1943. Subsequent schedules for Electro-Motive, throughout the war period provided for freight locomotives only.

Material allocations by Government regulation as noted above, commenced in May 1942, at least sixteen months after Alco's new designs for freight locomotives were completed, as stated to this Committee by Alco's Vice President -- ample time to place a new locomotive in production had they felt so inclined.

Actually, when World War II started General Motors was the only company with a proven freight locomotive in production. For this reason, we were confined to road freight power and all others were limited to the production of switcher power.

What happened to our percentage of total business during the material allocation period? It was as follows:

<u>36</u>	<u>37</u>	<u>38</u>	<u>39</u>	<u>40</u>	<u>41</u>	<u>42</u>	<u>43</u>	<u>44</u>	<u>45</u>	<u>46</u>
88.7	73.4	78.9	75.2	67.0	57.2	(53.1	40.7	50.5	51.2)	65.4
						War Years				

Thus, General Motors' lowest position in the industry was actually during the war years under Government regulations, as contrasted to the years when free and open competition determined sales.

Referring to Mr. Lewis' testimony that Alco and other competitors were restricted under Government allocation

of material, and that General Motors was given the assignment by the Government to turn out road freight diesel locomotives at a high rate, Senator O'Mahoney had this to say:

"I think this is a matter of very great importance, because in the construction of the War Production Board, the Government gathered industrial executives from the four corners of the country.

"These leaders of industry were recruited to help win the war, and it was frequently alleged at the time that the War Production Board was staffed with employees of industry who, if they did not favor the particular companies from which they came, at least did not lean over backward whenever any matter affecting the interests of those companies was involved.

"So this Committee will want to know very completely the story of that order.

"Apparently, according to your testimony, it changed the direction of the whole development of diesel engines. It placed a handicap upon

"the pioneers of the industry and gave a great advantage to the newcomer; am I right?"

"Mr. Lewis: 'Yes, sir; we feel that way.'"

The Defense Transportation Authority (DTA) had at various times the following personnel assigned to locomotive production as claimant agency:

Charles Wolfe	- Western Maryland Railroad
Charles Young	- Pennsylvania Railroad
Victor E. Rennix	- Baldwin Locomotive Works
Jack Loftis	- Denver & Rio Grande Western Railroad

The War Production Board had a Transportation Equipment Division whose responsibility it was to allocate materials for locomotive production as a result of claims put upon them by the DTA. The following personnel was assigned to this division at various times:

Charles Creaser	- New York Central Railroad
Lynne White	- Chicago & North Western Railroad
Warren Kelly	- Santa Fe Railroad
Marshall Raymond	- American Locomotive Company
Mathew Tate	- Lima Locomotive Company

The railroad personnel were rotated in their assignments but the personnel of the three locomotive builders remained on the permanent staff throughout the war. It will be noted that no General Motors personnel was on either Board, but that three of its four competitors furnished an industry representative for one or the other of the two boards. They remained on these boards throughout the war.

During these hearings the two principal competitors of General Motors stated that General Motors "head start" provided an advantage which proved to be almost an unsurmountable obstacle in obtaining a fair share of the business after World War II. One of them referred to this as a "historical advantage" similar to that enjoyed by steam locomotive builders because of their many years of business association with the railroads. The facts are as follows:

Excluding the war period, when under Government regulation, Electro-Motive made no switchers, all competitors in the switcher field, with the exception of Fairbanks-Morse, were, from the very beginning of the diesel locomotive business on an equally competitive basis, through the availability of a full line of yard switchers. We were restricted in the production of

switchers through the years 1943-1945 when our competitors built a total of 1126 switchers and Electro-Motive built 54. Nevertheless, our ratio for the all-time period is 43.5 per cent.

The attached Exhibits J, K, L and M, covering yard switchers, passenger locomotives, road switchers and road freight locomotives are of importance in view of our competitors' statements on our historical position. Each exhibit has been developed to indicate the date on which a competitive company first entered the market with a competitive locomotive.

For example, Alco was a fully competitive factor in the passenger locomotive field with the availability of their passenger locomotive in January 1943; with their road switcher in November 1946, and with their road freight power in January 1946. The other competitive manufacturers, Baldwin and Fairbanks-Morse introduced their comparable types of locomotives at a later date. The attached exhibits are so arranged to indicate the number of locomotives we had delivered prior to the introduction of the first competitive locomotive and the number after the introduction of a competitive locomotive, when a free and fully competitive market existed.



Before Alco placed their Diesel passenger locomotive on the market in January 1940, Electro-Motive had made deliveries to only 13 railroads for a total of 103 passenger locomotives. After Alco offered their passenger locomotive, we made our first deliveries to 24 additional railroads. As of December 31, 1954, 1736 passenger locomotives were in service, of which, as stated above, only 103 or 5.9 per cent were delivered by General Motors prior to Alco's entry into the market. A balance of 94.1 per cent potential sales of passenger locomotives were available to Alco when they introduced their passenger locomotive. This was the situation out of which Alco's Vice President developed an "historical advantage" for Electro-Motive.

Baldwin and Alco introduced their first models of road switchers in September and November 1946. Fairbanks-Morse presented their new product in August 1947, and Electro-Motive followed in April 1948. Since we were the last entry, the potential market for this model was available to all from the very start, except for the 16 months "head start" that Baldwin and Alco had on Electro-Motive. Through December 31, 1954, there have been 6287 units bought by the railroads of which we have delivered 3554 or 56.5 per cent.

Alco produced their first freight road locomotive in January 1946. Prior to January 1946 we had delivered this model locomotive to 25 railroads for a total number of 1084 units. Following January 1946 when Alco first, and others later, were fully competitive, we sold locomotives to an additional 46 railroads with a total of 8620 units in service as of December 31, 1954. Even in this area, where because of the WPB material allocation program, we are supposed to have had an advantage, the fact is that on January 1, 1946, 87.5 per cent of the diesel locomotives for 64.8 per cent of the railroads were yet to be produced and were available to competition as potential sales.

During a considerable part of this postwar period, our competitors continued to produce a declining volume of steam locomotives. American Locomotive produced steam locomotives into 1947 and both Baldwin and Lima until 1949.

Stemming from the historical background is an "historical advantage" which General Motors enjoys -- the conviction of the railroads that General Motors pioneered the use of the Diesel locomotives with great advantage to them and the country.

The real basic reason for the high market penetration is customer preference. This was accomplished through a program embodying:

1. Original sound engineering concept.
2. Maximum standardization.
3. Quality manufacture and after-sales service.
4. Rapid engineering development and product improvement.
5. Design improvement made retroactive to prior models.

So outstanding has been the performance of our locomotives in comparison with others that we have been requested by our railroad customers to repower every type and make of competitive locomotives with our engines at the time of major overhaul. In other words, they have asked us to replace the competitive engine with our General Motors diesel engine. Some 44 competitive units have already been rebuilt with General Motors engines, and a future schedule of 64 units equal to our capacity for rebuilding these types is scheduled through 1956.

To our knowledge, no General Motors locomotive unit has ever been rebuilt with a competitive engine. We doubt that Committee counsel could get any witness to express even a "feeling" that this is due to General Motors traffic or in fact to anything other than that the General Motors diesel is just a better engine. Pictures of competitive locomotives rebuilt in our shop are included as Exhibit "N".

Customers' requirements and attitudes properly studied, evaluated, and acted upon at the proper time, have created our leading position in the diesel locomotive field; failure of our competitors to be competitive in this area has dictated their position in the industry.

Mr. James M. Symes, President of the Pennsylvania Railroad, in a speech which he made in Chicago on September 7, 1955, stated:


" \* \* \* \* I don't think you gentlemen would want me to fail to mention briefly some of the many fine constructive contributions General Motors has made in the past -- nor to fail to express our desire for their aid in continuing research and development work in the future, to our mutual advantage.

"The greatest single contribution to the economic and efficient operation of our railroads during my 40 years of association with the industry has been the development of the Diesel locomotive. We all know the important part General Motors has played in that development. Today they have 23 million horsepower operating on our railroads in more than 16,000 Diesel units, some of which have made between  $2\frac{1}{2}$  and  $3\frac{1}{2}$  million miles and are still on the road performing quite satisfactorily. I would guess that this development alone is saving the railroads a minimum of 500 million dollars a year -- with initial investments being paid off in 3 to 4 years."


Mr. Symes' feeling is shared by the entire railroad industry. It was earned honestly with a revolutionary new product and a concept of standardization and service, new in the railroad industry. It is precious to us and will be protected in the only way that such a reputation can be protected, namely, with continuing research, advanced engineering and efficient manufacture always directed towards a superior product and superior service.

EXHIBIT "E"

## WORLD'S FIRST STREAMLINED HIGH-POWERED STEAM LOCOMOTIVE



## NEW YORK & CENTRAL LINES



**PUBLIC EXHIBITION • Michigan Central Term., Detroit**

**JANUARY 14**

**9 A.M. to 6 P.M.**

## WE GO ON RECORD

**STEAM:** has resumed the dominating line of engine power throughout over 100 years of American Railroad-ing.

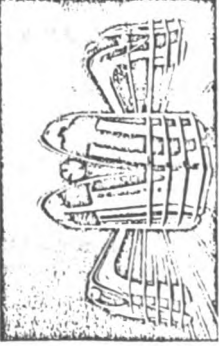
During this time, periodically, especially following the introduction of some new thoughts or experiments in transportation, there has appeared in the daily press announcements anticipating the death and burial of the steam locomotive. But each time the steam locomotive must have taken a new year of breath for it rose again and again to greater heights in efficiency and economy of operation.

Just now much discussion is taking place regarding the amount of weight which has been added to rolling stock in the continued search for more and more safety. And how much of this discussion we would again suppose that the steam locomotive has at last been laid to rest.

The American Locomotive Company, therefore, wishes to go on record with the following statement — that come what may — completely light weight trains, very high speeds, streamlining, or whatever — steam designs are ready to meet every demand of our railroad with the least amount of experimentation.

And the same factors, peculiar to steam operation, such as low first cost, economy of operation, low maintenance, reliability, safety, high horse power at hand, and the capability of being operated and maintained by unskilled labor, are still the dominating factors in the American Railroad today. And, for the next 100 years, will continue to keep steam the dominating power for railroad transportation for a long, long time to come.

## AMERICAN LOCOMOTIVE COMPANY



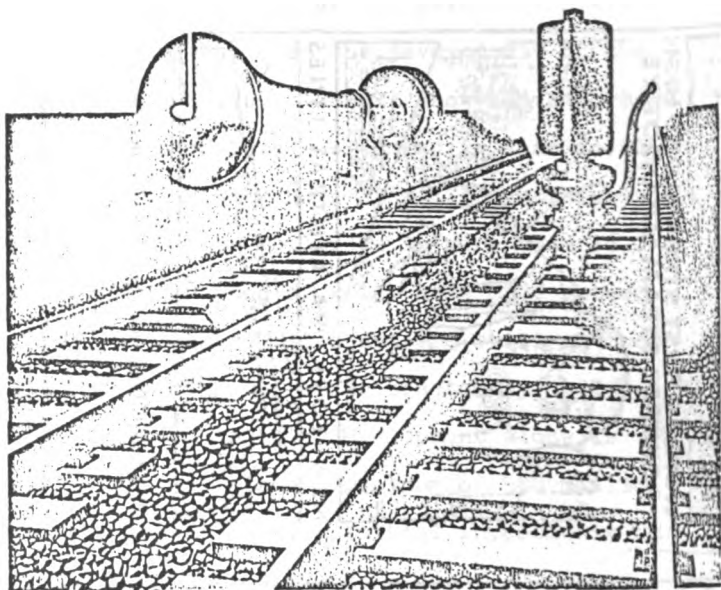
**BOCHUM-GERMANY**

*It is not proposed to make streamlined designs, steam or diesel, beyond its limits, in any way to form, based if not entirely.*

19-2229

THE SATURDAY EVENING POST

Number 1,234



## HORN...OR WHISTLE?

**DIESEL OR STEAM**...which is the locomotive power for the job? We can't tell yet. We don't know - now. We won't say - either. We study each railroad problem separately and carefully. And we recommend the type of motive power that meets the conditions. It may be a Diesel-Liner. It may be a Steam-Liner. Whichever fits the job better, we build it. And horn or whistle, it will be one of the finest, streamlined modern locomotives in the world.

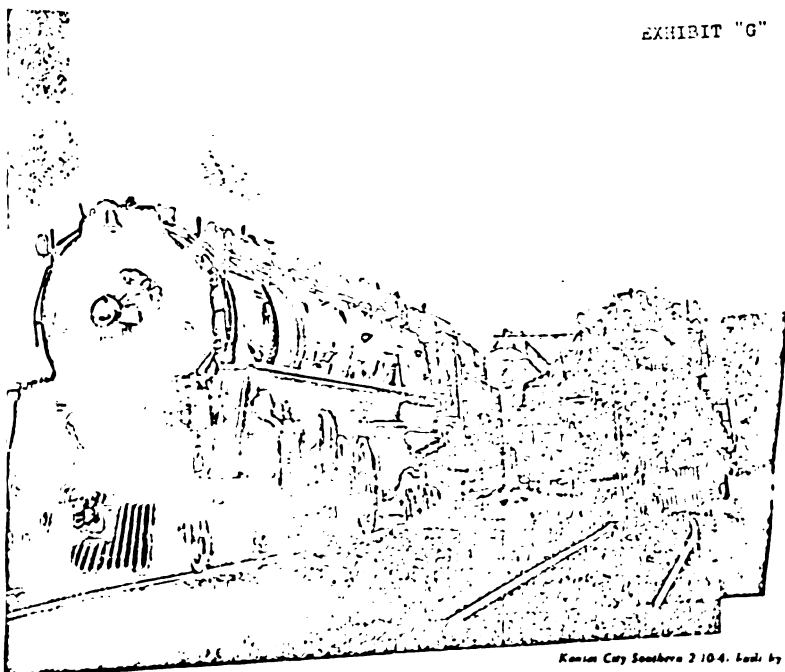


## AMERICAN LOCOMOTIVE

DIESEL • STEAM • ELECTRIC



EXHIBIT "G"




*Kenia City Southern 2104. Built by Lima*

# THE MOST FOR YOUR DOLLAR

The high-speed steam locomotive pays the highest returns, on the dollars invested, of any type of motive power, considered on the basis of initial cost, performance, and maintenance expense.

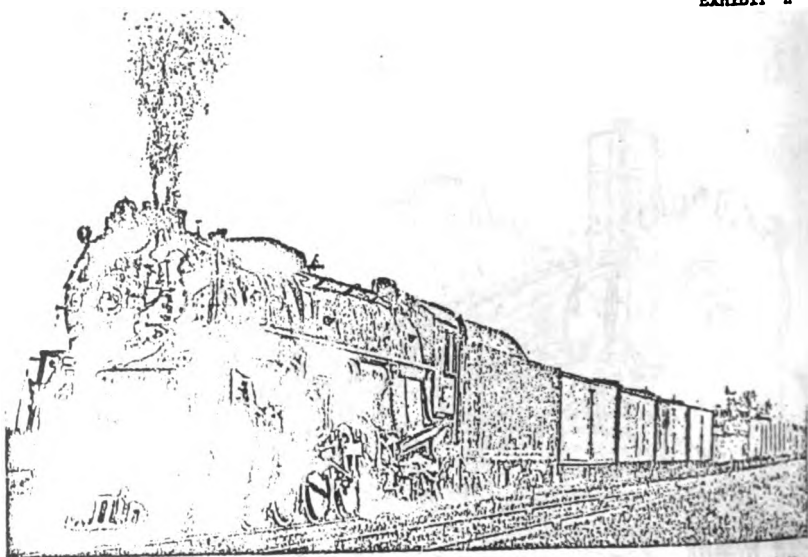
And Lima's insistence upon the highest standards of workmanship and materials assures the efficient performance of Lima-built steam power throughout years of heavy service.

LIMA LOCOMOTIVE WORKS  INCORPORATED, LIMA, OHIO

October 13, 1965



EXHIBIT "E"



*Richmond, Fredericksburg & Potomac 2-8-4 built by Lima*

# Steam is STILL SUPREME

As steam motive power bore the brunt of the war's transportation burdens, it likewise will be relied upon to meet the major transportation needs of the days ahead.

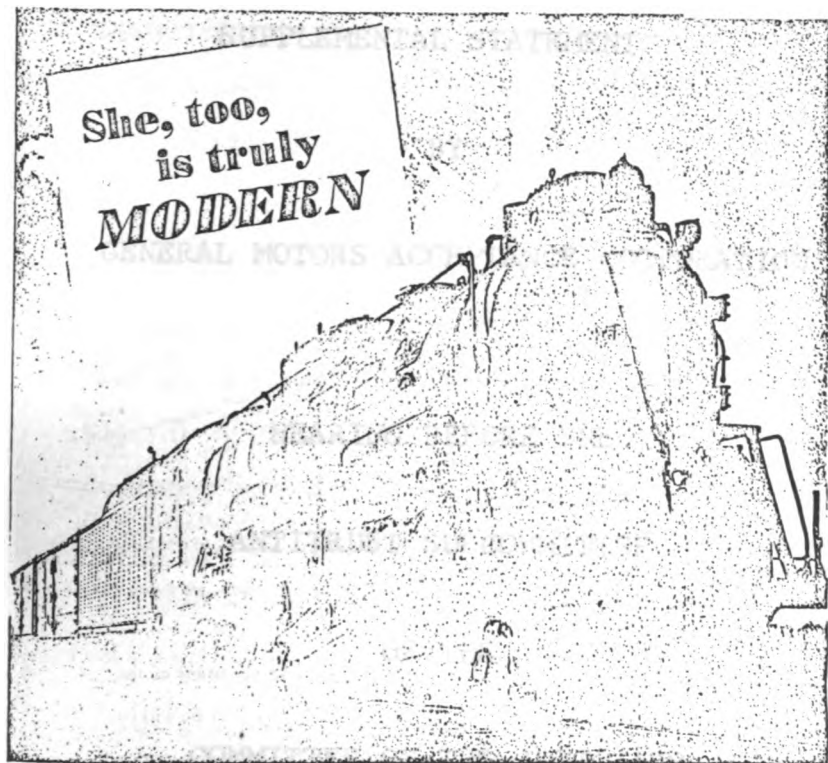
To keep pace with demands for still faster and more economical freight movement, modern Lima steam locomotives are built to haul heavy freights at sustained passenger train speeds.

LIMA LOCOMOTIVE WORKS



INCORPORATED, LIMA, OHIO

December 29, 1945



She doesn't wear chrome trim, and her paint is black, but she, too, is truly modern. She was built for a job — a modern job — and she does it well.

With planned scheduling she can stay on the road 16 and 18 hours a day, 27 or 28 days a month. With proper servicing — and such servicing facilities save more than they cost — she can be turned around in an hour or two. With her modern design, based on progressive engineering, her maintenance costs are low. And with equal attention, she — the modern steam locomotive — will give you more train-miles, more ton-miles, more passenger-car miles per year for each dollar of investment than any other type of motive power.

There is a place for steam, and in this place the modern steam locomotive is doing an outstanding job. We are continuing to build such locomotives.



**DIVISIONS:** Lima, Ohio — Lima Locomotive Works Division; Lima Shovel and Crane Division. Hamilton, Ohio — Hoover, Orisco, Beetschler Co.; Niles Tool Works Co.

**PRINCIPAL PRODUCTS:** Locomotives; Cranes and derricks; Molas heavy machine tools; Hamilton diesel and steam engines; Hamilton heavy metal stamping presses; Hamilton Kruss automatic cam making machinery; General heavy machinery; Heavy iron castings; Weldments.



(The statement referred to at p. 48 follows.)

**SUPPLEMENTAL STATEMENT**

**BY**

**GENERAL MOTORS ACCEPTANCE CORPORATION**

**HEARING BEFORE THE**

**ANTITRUST SUBCOMMITTEE**

**OF THE**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**H. R. 71**

**JULY 24, 1961**

703

This statement is submitted to clarify the position of General Motors Acceptance Corporation with respect to certain of the testimony and evidence in the record.

At the hearing of this Subcommittee on June 7, 1961, Mr. David B. Cassat stated as Pages 224 and 225 of the transcript, that GMAC's "compensating balances are usually about 5 percent of their bank loans, while ours are required to be 15" and "their compensating balances are that low" because "they use GM deposits for their compensating balances in GMAC."

The foregoing statement is incorrect. GMAC does not use General Motors Corporation's deposits for its compensating balances. Furthermore, in a study entitled "Finance Companies - How and Where They Obtain Their Funds" by John M. Chapman and Frederick W. Jones, it is stated that three of the largest sales finance companies "one of which is GMAC" are required to carry a balance of 20 percent of the line of credit when borrowing, and 10 percent of the line of credit when not borrowing.

In the statement of Richard E. Meier, appearing in the June 30, 1961 transcript, at Page B-6, he says -

"The unfair advantage over our company of GMAC that is transmitted to it by its share in the open account, no interest, arrangement GMAC enjoys from its paternalistic forbear for payment of the cars financed at wholesale by GMAC for GM dealers.

"This open account courtesy, needless to say, is not extended to my company or any other finance company. It amounted to 234 Million Dollars in September 1960; the interest on which at 4% for thirty days comes to \$780,000 and for 12 months totals to \$9,360,000! Please remember that this amount is a clear savings to GMAC - a very neat sum covered up in the cash carried by GM for GMAC's benefit."

Of this amount of \$234 Million, the sum of \$218 Million represents an open account item for cars in transit from the car assembly plants to dealer locations throughout the United States and Canada, most of which are going to be financed at wholesale by the dealers. This open account is extended to all Dealer Wholesale Financing Sources, as well as GMAC, and while the

estimated period required for the movement of cars from the factory to the dealer varies with the locations of the plants and the dealerships, it averages a four day allowance period.

Of the \$234 Million open account item referred to above, \$16 Million consisted of payables due General Motors Corporation under various employe plans and insurance premiums payable to Motors Insurance Corporation, a GMAC Insurance Subsidiary.

The American Finance Conference in its "Analysis of General Motors Acceptance Corporation's Position In Its Market" at Page B-24 of the transcript of June 30, 1961 stated:

"Mr. Stradella while giving figures on other larger market or statistical areas in his statement seemed to concede that he regarded the market in times sales contracts representing time sales by GM dealers as the proper statistical area for determination of GMAC's share of the market. \* \* \* \* \*

" \* \* \* \* \* Mr. Stradella readily admitted that this direct lending should be eliminated from the statistical area of GMAC competition."

Mr. Stradella, who appeared before this Subcommittee on June 9, 1961, testified at Page 454 of the transcript as follows: "We operate in the whole market". This was followed by these questions and answers:

"The Chairman. You do not make loans directly to a car owner?

Mr. Stradella. It does not matter.

The Chairman. You make loans to the dealers?

Mr. Stradella. We are trying to get the dealers to go after it.

The Chairman. But your business is ~~primarily~~ with the car dealers, not with the car owners.

Mr. Stradella. I think we have got a



"fundamental disagreement as to what the market is. We claim that the market is everybody who buys cars on credit."

In a statement of George W. Omacht, Vice President and Senior Counsel of Associates Investment Company, and Chairman of the Legal Committee of the American Finance Conference, filed with the Subcommittee on June 30, 1961, the following paragraph appears at Page B-37 of the transcript:

"The American Finance Conference upon belatedly learning of the plan of the Government to enter the decree petitioned the District Court to permit its attorneys to appear amicus curiae. The Government strongly resisted this petition and the petition was denied and the consent decree entered."

While negotiations for a final judgment by consent in the General Motors Antitrust Civil Suit were pending, namely, on May 10, 1952, on notice to the parties plaintiff and defendants in the litigation, a petition was presented to United States District Court Judge LaBuy by Scott W. Lucas and Charles A. Thomas,

attorneys for the American Finance Conference, for leave to appear as amici curiae. The motion was granted by Judge LaBuy on May 21, 1952.

Thereafter, the parties to the litigation told Judge LaBuy that they had worked out a consent decree. This decree, as proposed by the Government and General Motors Corporation and General Motors Acceptance Corporation, was presented in open court on June 21, 1952. On motion of the amici curiae the hearing on the consent decree was continued to July 23, 1952 to give the movants a chance to study the decree.

On July 28, 1952, after hearing counsel for all parties including the amici curiae, Judge LaBuy signed the consent decree.

In the same statement at Page B-53 of the transcript, Mr. Omacht presents an illustration of the application of GMAC policy to a "typical retail instalment sale" under the "GMAC Plan Since 1954" using

a finance charge of "\$8 per \$100 per annum." That a charge of 8 percent by dealers who finance with GMAC is not typical is demonstrated by the fact that in May 1961, new cars sold by dealers with a customer finance rate of more than 7 percent constituted only 10 percent of the contracts purchased by GMAC. Furthermore, 59 percent of contracts purchased by GMAC in May 1961, had customer finance charges of 6 percent or less.

At various times during the hearing there was considerable discussion with respect to the rates charged dealers by financing institutions. It was recognized that the customer rate is established by the dealer and not by the financing institution. However, if the discount rate of the financing institution is at a low level, the dealer is in a better position to establish a low customer charge and the public will benefit accordingly.

In comparing GMAC discount charge to the dealer it should be recognized that charges made by

other discount companies vary constantly and it is, therefore, difficult to establish a comparison on a national basis. However, reports from our branches in the field over the past few months indicate that in many areas the GMAC charge to the dealer is lower than charges made by some other discount companies.

For example, in the Baltimore area, on new cars where the dealer has a repurchase responsibility, the GMAC charge to the dealer is 4.25 percent flat per annum, while the dealer discounts of other major sales finance companies vary from 4.75 percent to 5 percent and the charge of one regional company is 4.55 percent under the same plan.

In the Buffalo area, where most contracts are on a non-recourse basis, that is, without dealer responsibility, the GMAC dealer non-recourse discount is 4.55 percent flat per annum. The charge of one other major finance company is approximately the same and the dealer charges of two other major companies

are approximately 5.0 percent.

In Chicago, which is on a non-recourse basis, the GMAC dealer discount is 4.80 percent flat per annum, while those of other major sales finance companies range from 5.0 percent to 5.5 percent.

In the New Orleans area, on those contracts on which the dealer has repurchase responsibility, the GMAC dealer discount is 4.85 percent flat per annum and other major sales finance companies generally charge 5.5 percent. On non-recourse contracts purchased in the New Orleans area, the GMAC dealer discount is 5.15 percent flat per annum, with the discount rates of other major companies ranging from 5.5 percent to 6.05 percent.

A further comparison in 14 metropolitan cities shows that the GMAC discount to the dealer on repurchase accounts ranges from \$8.63 to \$43.13 lower than rates charged to the dealer by certain other discount companies operating in these cities on similar transactions.

On non-recourse accounts, the GMAC discount is lower by amounts ranging from \$2.88 to \$48.88 in comparison with rates charged to the dealer by some of the other finance companies in the same cities.

Evidence that the low GMAC dealer discounts result in reasonable customer charges by the dealers is the fact that during May 1961, of the new retail automobile instalment contracts purchased by GMAC in the United States, 59 percent had customer charges of 6 percent flat per annum or less, 31 percent had customer charges of from 6 percent to 7 percent flat per annum and only 10 percent had customer charges above 7 percent.

It is a fair conclusion, therefore, that the GMAC low discount policy not only has been of benefit to the dealers but also to the instalment purchasers of GM cars since the dealers have passed the benefits on to the purchasers. It is further believed that this policy also has benefitted non-General Motors dealers and their customers because of its competitive effect in holding down the discount rates of other sales finance companies.

The viewpoint of the American Finance Conference with respect to finance rates, as expressed by its President, Mr. A. J. Blasco, at the Conference's 24th Annual Convention in November 1957, in the "President's Keynote Address" was as follows:

"Another difficult situation we face is diminishing profit. The squeeze is between rising costs and difficulty of passing the higher costs in the form of increased rates. Even stressing every economy of operation, it is inevitable that we must pass on a portion of these higher costs -- not only to dealers but through them to buyers as well."

He further said:

"Also, it is only through an effective public relations program that we can meet our competition and re-establish our dominant position in the field of automobile instalment financing."

In this hearing, much has been said about the business relationships of GMAC with General Motors

dealers. However, little emphasis has been given to certain important facts bearing upon the development of such business relationships. GMAC has been extending wholesale and retail automotive financing service to General Motors Dealers for over forty years. It was organized in 1919 to meet a very pressing need of General Motors Dealers and their customers for adequate and reliable financing services on a nationwide basis at reasonable cost. At that time not a single finance company was furnishing nationwide service, which was essential for automobile dealers and potential automobile customers in rural areas who could not obtain financing credit. It contributed importantly to the increase in automobile sales and to the availability of automobiles for potential customers who did not have, and could not borrow the funds required for such a substantial investment.



During World War II, when dealers had no new cars to sell, GMAC continued in business to satisfy the needs of General Motors Dealers and their customers for financing in connection with used car sales and major repairs. That period, it will be recalled, saw the dislocation of millions of persons because of military service or war employment, so that the national scope of GMAC's operations was of a special importance.

The extension of wholesale and retail automotive credit is not a mechanical operation or business. It involves judgments and discretion including evaluations of security, credit, terms, and even character. Necessarily, therefore, a finance company which has been in business for over forty years builds up with its customers good-will or ill-will in varying degrees. To the extent that such good-will or ill-will is developed, it becomes "built-in" over such a long period.

Therefore, in considering the so-called "built-in" relationship of GMAC with General Motors Dealers, the foregoing are some of the considerations that must be evaluated.

(The information referred to at p. 545 follows:)

STATEMENT CONCERNING THE  
UNCONSTITUTIONALITY OF H.R. 71

This memorandum, submitted on behalf of General Motors Corporation, will discuss the unconstitutionality of H. R. 71 which would make it unlawful for any motor vehicle manufacturer to own or maintain, directly or indirectly, any facilities for financing the sale, or issuing policies of insurance in connection with the purchase or sale, of motor vehicles which it manufactures. It develops three points; namely, that this Bill is not a valid exercise of the commerce power, that it is lacking in constitutional safeguards necessary in legislation permitting the divestiture of property rights, and that it violates due process.

Before discussing these points there are certain basic factors, many of which are peculiar to the automobile industry, which should be considered in appraising the relationship between a motor vehicle manufacturer and a finance or insurance subsidiary.

A motor vehicle is a technically complicated, semi-durable consumer good which is distributed on a nation-wide scale through thousands of local, independent dealerships in virtually every city and town in the United States. To the retail buyer, an automobile represents such a substantial investment of money that

he quite naturally tends to look to the manufacturer, directly or indirectly, for assurance that the automobile will function properly and that adequate repair facilities will be available in the event they are needed. This service is essential for the automobile owners in rural as well as metropolitan areas, and for owners who move or travel from one part of the country to another.

Historically, the availability of adequate finance and insurance facilities has been an essential element in the effective distribution of automobiles through independent retail outlets. Such finance and insurance services were considered by General Motors to be just as essential to the effective merchandising of cars in volume as the dependability, quality, and styling of the product, and efficient distribution techniques.

The manufacturer is vitally interested not only in the sale of its products to the dealer at wholesale, but also in the retail sale of its products by the dealer to the consuming public. General Motors owes its 14,000 dealers the obligation to make certain that adequate and economical wholesale financing and insurance facilities are available to each dealer. General Motors is also obligated to the public to make certain that adequate retail financing and insurance facilities are available to the many hundreds of thousands of retail

purchasers who each year buy General Motors automobiles on an instalment basis.

In addition, the manufacturer has a legal responsibility for the operation and performance of the motor vehicle after the purchase at retail. The manufacturer extends to the dealer a "New Vehicle Warranty" covering certain component parts of the car for a period of twelve months after delivery to the original retail purchaser or before it is driven 12,000 miles, whichever event first occurs. The dealer in turn, as seller, extends an identical warranty to the retail purchaser. For all practical purposes, and with few exceptions, the fulfillment of the warranty operates as if it were extended directly to the retail purchaser.

The manufacturer has the further direct responsibility, imposed by law, that the vehicle will function safely. In other words, the manufacturer has a direct liability to the retail purchaser for damages resulting from negligent manufacture. This liability exists even though the failure is the result of a defective component manufactured by a supplier, but incorporated in the end product by the manufacturer.

The relationship between the automobile manufacturer and the dealer, and ultimately the consumer, is

a composite of many interdependent factors which are beneficial to each but which are all directed to the ultimate goal of customer satisfaction. The factors of wholesale and retail financing are as much a necessary and integral part of this relationship as the trademark and trade name of the manufacturer, the warranty extended by the manufacturer to the dealer and from the dealer to the consumer, and the liability of the manufacturer to the consumer for negligent manufacture.

Thus, the ownership of a finance or insurance company by an automobile manufacturer is closely related to the manufacturer's business and is an entirely natural, appropriate and proper incident to the manufacturer's principal activity.

I. H.R. 71 Is Not A Valid Exercise  
Of The Power Of Congress To  
Regulate Interstate Commerce

While the delegated powers of Congress, particularly the commerce power, are unquestionably broad in scope, it has always been recognized that the exercise of Congressional power is limited by the Constitution. In Gibbons v. Ogden, 9 Wheat. 1, 196 (1824), the Court said:

"This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution."

The primary restrictions placed on the legislative power by the Constitution are defined by the Supreme Court in Lawton v. Steele, 152 U.S. 133, 137 (1894):

"To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

The Congress may no more act arbitrarily in carrying out its constitutional powers than it can act without constitutional authority. In Perez v. Brownell, 356 U.S. 44, 58 (1958), the Court (Frankfurter, J.) said:

"Broad as the power in the National Government to regulate foreign affairs must necessarily be, it is not without limitation. The restrictions confining Congress in the exercise of any of the powers expressly delegated to it in the Constitution apply with equal vigor when

that body seeks to regulate our relations with other nations. Since Congress may not act arbitrarily, a rational nexus must exist between the content of a specific power in Congress and the action of Congress in carrying that power into execution."

In the words of Mr. Justice Frankfurter, what is the "rational nexus" between the destruction of the right of a motor vehicle manufacturer to facilitate the movement of its products in interstate commerce by making available finance and insurance facilities and the regulation of commerce? The Chairman of this Subcommittee, when introducing H.R. 71 on January 4, 1961, made the following statement:

"The purpose of this bill is to divorce General Motors Acceptance Corp. from General Motors Corp. and to restore free competition to the American automobile market.

"My study of the automotive industry convinces me that General Motors Corp. has tremendous monopolistic powers, some of which stem from the corporation's ownership and use of General Motors Acceptance Corp. My study shows that these monopolistic powers operate to the detriment of the U. S. economy, to the detriment of the automotive industry and to the detriment of the American car-buying public.

"The only way to remove these monopolistic powers of General Motors Corp. is to divorce this giant from its finance subsidiary, General Motors Acceptance Corp., and to let the finance company operate as an independent sales finance company in a completely free market."

The constitutional infirmity of legislation aimed at the destruction of a lawful and useful business activity in the guise of regulation of interstate commerce is evidenced by the decision of the Supreme Court in McFarland v. American Sugar Refining Co., 241 U.S. 79 (1916). There, a statute which purported to regulate the sugar refining industry provided that a purchaser who systematically paid a lower price for sugar in Louisiana than he paid in any other State "shall be prima facie presumed to be a party to a monopoly or conspiracy in restraint of trade . . . ."

As in the instant case, the alleged justification for the statute was that the Sugar Company was a monopoly and combination in restraint of trade throughout the United States and that the statute would strike at this monopoly. The statute declared that there was, prima facie, a connection between the fact of lower



prices paid for sugar in Louisiana and participation in a monopoly or conspiracy. In declaring the statute unconstitutional on multiple grounds the Court said (p. 85):

"If the connection were admitted it would be so much the worse for the constitutionality of the act. We deem it enough to say that neither that supposed connection nor the general intimations of the plaintiff's wickedness in the answer deprive it of its constitutional rights or prevent it from asserting them in the only practicable and adequate way."

The real evil of the legislation was stated by the Court (pp. 86-87):

"But it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime. If the statute had said what it was argued that it means, that the plaintiff's business was affected with a public interest by reason of the plaintiff's monopolizing it and that therefore the plaintiff should be prima facie presumed guilty upon proof that it was carrying on business as it does, we suppose that no one would contend that the plaintiff was given the equal protection of the laws."

H.R. 71 goes far beyond the statute condemned in American Sugar Refining. There the statute merely

created a prima facie presumption of monopoly. Here the proposed legislation says in effect: The ownership of any finance or insurance facilities by a motor vehicle manufacturer for use in financing or insuring its products shall be deemed to be a restraint of trade or a monopoly, and no such manufacturer may show that such ownership is neither in restraint of trade nor monopolistic.

In view of the avowed purpose of H.R. 71 and the patent lack of any rational nexus between the ownership of finance or insurance facilities and the regulation of trade and commerce between the states, it is apparent that the proposed legislation could not survive constitutional challenge.

The essential constitutional invalidity clearly appears when it is understood that, whatever its particular purpose may be, the Bill categorically denies to any manufacturer of motor vehicles the right to extend credit in the wholesale and retail marketing of its products. The only exception permitted is an extension of credit in wholesale sales for "a reasonable time after purchase at no additional charge." It is a legislative fiat that the conduct of a business in

accordance with the accepted and established principles of a free enterprise system is ipso facto unlawful — that it is a restraint of interstate commerce and a violation of the antitrust laws.

Rarely, if ever, in the history of Anglo-American jurisprudence have the principles of due process been so ignored. The fundamental right of a person to elect whether to sell for cash or credit will be denied to a single, small group. Manufacturers of motor vehicles alone, out of the many thousands of industries throughout the country, will be required to do business on a cash basis. This form of legislative prohibition and discrimination is, on its face, arbitrary, unreasonable and wholly devoid of any rational connection with the legislative power purportedly being exercised.

Such legislation is nothing more than an economic bill of attainder. The Supreme Court has condemned such statutes "no matter what their form" when they "apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." United States v. Lovett, 328 U.S. 303, 315 (1946).

Similar attempts to establish a non-existent factual nexus by legislative declaration have been held to violate the due process clause. For example, in Heiner v. Donnan, 285 U.S. 312 (1932), the Court invalidated a provision of the Revenue Act of 1926 which created a conclusive presumption that gifts made within two years of the death of the donor were made in contemplation of death. In holding that the Act was arbitrary and indefensible from a constitutional viewpoint the Court said (pp. 327-28):

"The presumption here excludes consideration of every fact and circumstance tending to show the real motive of the donor. The young man in abounding health, bereft of life by a stroke of lightning within two years after making a gift, is conclusively presumed to have acted under the inducement of the thought of death, equally with the old and ailing who already stands in the shadow of the inevitable end . . . . Such a statute is more arbitrary and less defensible against attack than one imposing arbitrarily retroactive taxes, which this court has decided to be in clear violation of the Fifth Amendment."

To the argument that, absent a conclusive presumption, taxpayers might escape payment of the tax by proof that the gift was not in fact made in contemplation of death, the Court replied (p. 328):

"This is very near to saying that the individual, innocent of evasion, may be stripped of his constitutional rights in order to further a more thorough enforcement of the tax against the guilty --a new and startling doctrine, condemned by its mere statement and distinctly repudiated by this court in the Schlesinger (p. 240) and Hooper (p. 217) cases involving similar situations."

Finally, the Government urged that the conclusive presumption constituted a rule of substantive law and not a rule of evidence and as such should be upheld. This contention was similarly rejected by the Court (p. 329):

"However, whether the latter presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the Schlesinger case, as we are not; for that case dealt with a conclusive presumption and the court held it invalid without regard to the question of its technical characterization. . . .

"If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule of substantive law."

Still another instance in which the Court refused to sustain legislative efforts to create a non-existent nexus between the fact established by the statute and the legislative power purportedly being exercised is Manley v. Georgia, 279 U.S. 1 (1929). There the Court held invalid as a denial of due process a statute which imposed presumptive criminal liability upon bank directors in all cases of insolvency. The statute provided that every insolvency of a bank "shall be deemed fraudulent," but permitted the directors of an insolvent bank to rebut the presumption. The statute was declared unconstitutional because the creation of even a rebuttable presumption of fraud from the mere fact of insolvency was so lacking in rational connection as to amount to a denial of due process of law. The Court said (p. 6):

"Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property. ' . . . it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.'" McFarland v. American Sugar Co., 241 U.S. 79, 86.

H.R. 71 would conclusively establish that the maintenance of finance and insurance facilities by a

motor vehicle manufacturer is unlawful and in violation of the antitrust laws. Such a legislative fiat would fail even if the presumption were merely rebuttable (McFarland v. American Sugar Refining Co., supra); it would certainly fail as a conclusive presumption of a substantive rule of law (Heiner v. Donnan, supra). There has been, and can be, no showing of any rational nexus or connection between the mere ownership of finance and insurance facilities by an automobile manufacturer and the constitutional regulation of commerce between the states.

II. H.R. 71 Is Wholly Lacking In The Constitutional Safeguards Traditionally Provided In Legislation Permitting The Divestiture Of Existing Property Rights

The proposed legislation would divest valuable property rights and prohibit otherwise lawful activity by actual and potential motor vehicle manufacturers through legislative fiat, without exception and without any opportunity for judicial hearing, determination, or review. In this respect it differs basically from the customary approach of Congress, even in respect of industries traditionally subject to regulation. Historically, in such cases, Congress has provided a framework of general principles by which the ultimate decision as to the necessity or appropriateness of resorting to divestiture is made by a disinterested tribunal, with due regard for the property rights of investors and the interests of the consuming public.

Proceedings before such tribunals — quasi-judicial in nature as they are — have always been subject to the requirement of due notice, a hearing with full opportunity for the presentation of all relevant factual material, and the right of judicial review



to assure that the order of divestiture is reasonably appropriate and necessary on the facts in evidence and under the standards established by the statute. When legislation meets these familiar standards, full and proper recognition has been given to the basic principles of due process, which can be traced to the Magna Charta and Chapter 3 of Edw. III (1355), that — "no man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

Within recent years the Congress has, on at least two occasions, recognized the continuing vigor of these age-old principles.

The Public Utility Holding Company Act of 1935, 15 U.S.C. § 79, exemplifies the traditional legislative concern with settled concepts of due process. Congress did not attempt to effectuate the simplification of holding company systems — the purpose of the Act — by decreeing simplification or divestiture. On the contrary, it provided that the Securities and Exchange Commission may — after notice, the taking of

evidence, the presentation of plans by the Commission and the companies involved, and a factual determination on the basis of standards set by the Congress, subject to review by the Court of Appeals — order that the business be confined to an integrated utility system.

Under the powers of exemption set forth in the Act, a holding company may retain businesses "which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." The acquisition of securities or the assets of utilities may be approved by the Commission when "necessary or appropriate in the public interest or for the protection of investors and consumers." Further, a holding company may continue to control additional integrated utility systems, when, for example, they could not be independently operated without the loss of "substantial economies." 15 U.S.C. § 79k.

In sustaining the constitutionality of the Act, the Supreme Court specifically recognized the constitutional limitations which are completely ignored

in H.R. 71. In North American Co. v. S.E.C., 327 U.S. 686, 709-10 (1946), it was pointed out that:

"Any plan of divestment or reorganization, moreover, must be carefully scrutinized by both the Commission and the enforcing court, thus enabling the assertion and protection of all shareholders' rights. . . . And there are provisions in the Act guarding against unduly rapid divestment or liquidation. In the light of such statutory and judicial safeguards and in the absence of any alleged unfair plan of divestment, we cannot say that North American's shareholders are adversely affected, from a constitutional standpoint, by the operation of § 11(b)(1)."

In H.R. 71, there is provided no scrutiny whatever by a commission or an enforcing court to permit the assertion and protection of any shareholders' rights. There is only legislative fiat. There are no provisions guarding against unduly rapid divestment or liquidation. There are no statutory or judicial safeguards, or any safeguards whatever. There is only an arbitrary and inflexible requirement of complete and virtually forthwith divestiture which inevitably will adversely affect the shareholders of General Motors from a constitutional standpoint.

Again, in American Power & Light Co. v. S.E.C., 329 U.S. 90 (1946), which also sustained the constitutional

of the Act, the Court reiterated that the Constitution itself imposes limitations upon the exercise of any power of Congress. Throughout the Court's extensive review of the propriety of the Commission's plan of simplification, there are repeated references to the constitutional safeguards provided by the Act and in the procedures thereunder. The Court noted that under the Act private rights were protected "by access to the courts to test the application of the policy" (p. 105); that judicial review of the remedies adopted by the Commission "safeguards against statutory or constitutional excesses" (p. 106); and that intervention by the courts is authorized "if the remedy chosen is unwarranted in law or is without justification in fact." (pp. 112-13) The Court then found that on the evidence the decision of the Commission was reasonable and did not constitute an "abuse of its discretion" because the "rational basis for the Commission's choice" was to be found in the record evidence.

H.R. 71 neither states a legislative policy nor permits access to the courts to determine whether the legislation has a policy other than the obvious one of

(The information referred to at p. 543 follows:)

destroying competition for the benefit of certain finance companies. Nor does the proposed legislation attempt to establish any standards to safeguard against statutory or constitutional excesses or abuse of discretion.

The Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-48, further demonstrates the traditional unwillingness of the Congress to abandon settled concepts of the process in framing legislation dealing with situations in which the Congress has concluded that under certain circumstances divestiture may be appropriate or necessary. The Act by its terms permits the ownership of "shares of any company all the activities of which are of a financial, fiduciary, or insurance nature and which the Board after due notice and hearing, and on the basis of the record made at such hearing, by order has determined to be so closely related to the business of banking or of managing or controlling banks as to be a proper incident thereto and as to make it unnecessary for the prohibitions of this section to apply in order to carry out the purposes of this chapter." 12 U.S.C. § 1843(c)(6).

Throughout the hearings on H.R. 71, references have been made to the Bank Holding Company Act and the

purported impact that statute would have had on Transamerica Corporation and its stock holdings in the Occidental Life Insurance Company. A reading of the Act reveals that there could have been no mandate to Transamerica under that statute, as it was finally enacted, to dispose of its stock in Occidental since the Bank Holding Company Act by its terms permits a bank holding company to own shares in any financial, fiduciary or insurance corporation. Under the Act Transamerica could have been required to divest itself of its Occidental stock only if the Federal Reserve Board found in an appropriate proceeding "after due notice and hearing" that divestiture was necessary to carry out the purposes of the Act.

The Bank Holding Act does not contemplate automatic and absolute divestiture of these companies, but, on the contrary, provides that the determination of that question shall be by the Federal Reserve Board, subject to final review by the courts, all in accordance with the traditional principles of due process. The decision with respect to the necessity of divestiture is left to the Board which is required to take evidence,

## AUTO FINANCING LEGISLATION

ar witnesses, permit cross-examination and make a determination, which is subject to review by the Court of Appeals. 12 U.S.C. § 1848.

Nor does the Hepburn Act, 49 U.S.C. § 1(8), by which Congress sought to divorce transportation of commodities from their production, offer any legislative precedent for H.R. 71. The commodities clause of the Hepburn Act purported to prohibit any railroad from transporting in interstate commerce any article or commodity — other than timber and timber products — (1) which had been manufactured, mined or produced by the railroad, or (2) under its authority, or (3) which the railroad owned in whole or part, or (4) in which it had any interest, direct or indirect.

Entirely apart from the fact that the Hepburn Act is a part of an over-all regulatory scheme of a public utility — which fact alone would conclusively distinguish it from a constitutional point of view — the construction which has been placed on the Act by the courts serves to highlight the constitutional problems that are inherent in H.R. 71.

The basic objectives of the Hepburn Act and H.R. 71 are of the same general type. On the one hand,

the complete separation of transportation and production was sought; on the other, the complete separation of credit from production.

In United States v. Delaware & Hudson Co., 213 U.S. 366 (1909), the first test of the Hepburn Act, the Government urged that the statute should be construed to prohibit the carriage by a railroad not only of commodities which it had produced and which it owned at the time of the carriage, but also of those products which had been produced by the railroad or a subsidiary company but which the railroad no longer owned. The Supreme Court rejected this construction.

The Court stated that, if the statute were to be construed to prohibit transportation by a railroad of products it no longer owned, as contended by the Government, the Act would present "grave constitutional questions." The Court commented that it is "elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will



save the statute from constitutional infirmity." The Court then construed the prohibitions of the Act to be limited to the transportation of commodities which the railroad had produced and still owned at the time of carriage. It specifically excluded from the operation of the Act property owned or transported by a bona fide subsidiary of the railroad.

The express language of H.R. 71 raises the same grave constitutional questions which the Government's construction of the Hepburn Act raised and which the Supreme Court avoided answering by rejecting the Government's construction of the Act. H.R. 71 categorically prohibits a manufacturer from maintaining any facilities, directly or indirectly, for financing the sale of products which it has manufactured but in which it no longer has a property interest. The prohibition contained in H.R. 71 goes far beyond any prohibition contained in the Hepburn Act, even as urged by the Government in the Delaware case, since under H.R. 71 the prohibition would extend to sales by independent merchants to the public, whereas under the Hepburn Act the attempted prohibition extended only to transactions involving the railroad itself and its subsidiaries.

The very antitrust laws which H.R. 71 purports to supplement do not unqualifiedly direct the courts to order divestiture. In certain cases arising under the Sherman Act the courts have, in the exercise of judicial discretion, determined that the drastic remedy of divestiture was the only appropriate relief in the circumstances. However, no such relief has ever been decreed, except after a plenary judicial proceeding, affording the parties the full measure of constitutional protection. Northern Securities Co. v. United States, 193 U.S. 197 (1904); Standard Oil Co. of N. J. v. United States, 221 U.S. 1 (1911); United States v. American Tobacco Co., 221 U.S. 106 (1911).

Similarly, proceedings under Section 7 of the Clayton Act require record evidence that the effect of the questioned acquisition "be substantially to lessen competition, or to tend to create a monopoly." F.T.C. v. Western Meat Co., 272 U.S. 554 (1926); Aluminum Co. of America v. F.T.C., 284 Fed. 401 (3d Cir. 1922), cert. denied, 261 U.S. 616 (1923).

Congress has never attempted to legislate automatic divestiture under any antitrust law for it has recognized that, before property and property rights

can be destroyed by legislation, due process of law requires that there be a proceeding, a full hearing, a factual determination of the existence of a violation of law, and the application of the statutory standards to such factual determination. H.R. 71 would by-pass all these ancient constitutional safeguards and divest the judicial power in a field in which it is well established, in order, in the words of its sponsor, "to divorce General Motors Acceptance Corp. from General Motors Corp."

As pointed out by the Supreme Court almost a century ago in Rees v. City of Watertown, 86 U.S. 107, 123 (1873):

"Whether, in fact, the individual has a defence . . . , or is without defence, is not important. To assume that he has none, and, therefore, that he is entitled to no day in court, is to assume against him the very point he may wish to contest."

Where life, liberty or property are affected, due process demands that persons have the "opportunity to be heard," Grannis v. Ordean, 234 U.S. 385, 394 (1914); Simon v. Craft, 182 U.S. 427, 436 (1901), and "to present their objections," Mullane v. Central Hanover Bank &

Trust Co., 339 U.S. 306, 314 (1950), in a judicial proceeding. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930).

Although H.R. 71 purports on its face to be a supplement to the antitrust laws, it is apparent that its basic purpose and necessary effect is to supplant those laws and well-settled constitutional procedures and to establish a double standard of antitrust legality. No qualified witness has testified that, if the ownership of a finance company by a motor vehicle manufacturer tended to restrain trade or to establish a monopoly, the government does not have ample power to indict the offending companies or seek civil relief, including divestiture under existing statutes.

It appears, however, that the Department of Justice is willing, at least in this instance, to abandon its traditional and stated policy of enforcing the anti-trust laws in the courts through the application of general principles of law in specific litigation, rather than by legislative fiat directed at a single situation.\*

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\* Mr. Loevinger's testimony in this connection is attached as Appendix 1.

The somewhat startling reasons advanced for this abandonment of constitutional guarantees are that General Motors might wish a court to hear the testimony of its 15,000 dealers;\* that this could "prolong the trial of a case not only for a long period but possibly even beyond the resources of the Department of Justice"; that "since time is on the side of the person who is defending, this can in and of itself be a potent weapon" (Tran. 247-48); and that "legislative action would certainly be swifter and more certain than any possibility offered by litigation." (Tran. 271)

None of these considerations constitute a valid excuse for abandoning settled judicial procedures and fundamental concepts of due process of law. Disregard

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\* An incorrect statement in the record that General Motors took the depositions of some 1,500 dealers prior to the 1952 consent decree should be corrected. (Testimony of Thurman Arnold, June 30, 1961, p. 1110.) Mr. Loevinger testified that the number was close to 400 (Tran. 255). The correct figure is 391.

f constitutional requirements cannot be justified  
y a contention that observance of the constitutional  
mandate of due process would require time and the  
production of proof. Indeed, it is truly hornbook  
law that "constitutional guaranties may not be made to  
yield to mere convenience." Weaver v. Palmer Bros. Co.,  
27 U.S. 402 (1926).

As recently as 1957 in Lambert v. California,  
355 U.S. 225, 229, the Supreme Court condemned in  
principle the invasion of constitutional rights by a  
statute which was nothing "but a law enforcement  
technique designed for the convenience of law enforcement  
agencies."

The constitutional questions raised by H.R. 71  
are not answered by the contention that any further effort  
by the Government, under the antitrust laws, to compel  
the divestiture by General Motors Corporation of its  
stock in General Motors Acceptance Corporation is  
completely barred by the doctrine of res judicata.  
The argument seems to be that inasmuch as the complaint  
in the civil suit against General Motors and General  
Motors Acceptance Corporation was in part based upon

a claimed violation of Section 7 of the Clayton Act, the Government cannot now be heard to contend that General Motors Corporation and General Motors Acceptance Corporation have been guilty of conduct which restrains trade or lessens competition in the field of automobile finance.

The contention is further made that the Supreme Court in Ford Motor Co. v. United States, 335 U.S. 303 (1948), specifically held that the ownership of General Motors Acceptance Corporation by General Motors was illegal under the antitrust laws. Mr. Thurman Arnold, representing the Associates Investment Company and testifying in support of the legislation, stated that in view of the holding in the Ford Motor Co. case "any objective lawyer must conclude that General Motors is now violating the antitrust laws and is protected by an immunity given to it by the Department of Justice through the consent decree." (June 30, 1961, Tran. 1118)

The entire argument and most of the contentions of the proponents of H.R. 71 in respect of res judicata are misleading and appear to be based upon inaccurate statements of fact and erroneous conclusions of law.

At the outset it must be recognized that the doctrine of res judicata is not, as was stated by Mr. Arnold, a simple rule of commercial law comparable to a confession of judgment entered in answer to a suit on a promissory note. (Cf. Tran. 1104) On the contrary, as was stated by Mr. Loevinger, Assistant Attorney General in Charge of the Antitrust Division — in refusing to predict whether or not the doctrine of res judicata would bar, in appropriate circumstances, a suit by the Government for divestiture of GMAC — "It is an extremely complex matter involving many considerations both factual and legal, and we are simply not prepared to state a position on that." (Tran. 246, June 8, 1961)

General Motors concurs in the judgment expressed by Mr. Loevinger and declines to attempt to predict the precise factual circumstances in which a court might hold that the doctrine of res judicata was applicable. We believe, however, that it may be of assistance to the Committee to consider in its deliberations some of the fundamental principles underlying the concept.

The difficulties encountered in applying res judicata in particular situations are infinitely



greater in antitrust cases than in other types of litigation. Antitrust cases are by their nature complex and offer a wide choice of proceedings to Government counsel. Further, new factual conditions which arise after the original adjudication and the clear reluctance on the part of the courts to restrict enforcement of the antitrust laws all serve to make the analysis of the prior adjudication problem very difficult.

Informed and experienced attorneys frequently differ as to the applicability of the doctrine and often find it necessary to take completely divergent positions depending upon the facts of the particular problem. In the 1959 hearings in respect of legislation similar to H.R. 71, Mr. Arnold, speaking for Associates Investment Company, testified: "If the Attorney General files a dissolution suit against General Motors of this scope, then the decree in the General Motors Acceptance Corporation suit would not constitute a bar or be res judicata to a dissolution of General Motors, including a separation of General Motors from General Motors Acceptance Corporation." (Senate Hearings on S. 838 and S. 839, p. 270 (1949)) The same counsel, however, in the current hearings testified in regard to ownership of GMAC by General Motors: "The Department is forever barred under

the doctrine of res judicata from attacking this particular combination." (Tran. 1070, June 30, 1961)

The basic fallacy underlying the argument of the proponents of H.R. 71 that the General Motors consent decree gives General Motors immunity to pursue an unlawful activity is the assumption that the decision of the Supreme Court in the Ford case constitutes an adjudication of the illegality of the ownership of a finance company by an automobile manufacturer. The opinion of the Supreme Court in the Ford case establishes the precise opposite of that assumption. At page 322 of the majority opinion in that case, it is stated:

"The appellants /Ford/ agreed for a limited term to refrain from pursuing conduct which in the absence of an adjudication that it was illegal, they were otherwise free to pursue and which General Motors has always been free to pursue. There has been no such adjudication and successive extensions of the term have expired."  
(Emphasis supplied)

The Court in the Ford case did not find that the ownership of a finance company by an automobile manufacturer either lessened or restrained competition. Nor did it find that such ownership was illegal. The Court directly held that the consent decree prohibited Ford from conducting a perfectly legal business which General

Waters was not prohibited from conducting. This basic inequality as to lawful competitive activity compelled the Court to refuse to extend the term of the Ford consent decree.

Nor does the holding in United States v. du Pont, 351 U.S. 366 (1956), establish that the ownership of the stock of General Motors Acceptance Corporation by General Motors is, as Mr. Arnold testified, illegal. (Tran. 1114) Not only is the du Pont case, in the words of Assistant Attorney General Bevinger, "sub generis" and "quite distinguishable" (Tran. 252), but also the ownership of the stock of General Motors Acceptance Corporation by General Motors is expressly permitted by Section 7 of the Clayton Act, which provides that the Act does not apply to "the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the purchase and disposition of securities or extensions thereof or their owning and holding all or a part of the stock of such subsidiary corporation, when the effect of such formation is not to substantially lessen competition." 15 U.S.C. § 14

Furthermore, the formation and ownership of a subsidiary corporation by a manufacturer to finance the sale of automobiles and parts of the products it manufactures constitutes a very different relationship from that which exists when a supplier to a manufacturer is a bank, which lends to that customer.

Quite apart from the holding of the Supreme Court in the Ford Motor Co. case, the application of the most fundamental principles of the doctrine of res judicata will serve to disclose the illusory nature of the claim that the Government is powerless to take any action against General Motors for violations of the anti-trust laws in respect of its financing activities. There can be no question that, if General Motors Corporation or General Motors Acceptance Corporation has engaged in conduct since the date the decree was entered which violates either the Sherman Act or the Clayton Act the Government would have a clear right to reopen the decree and seek whatever additional relief the Court may deem appropriate. United States v. Swift & Co., 286 U.S. 106 (1932); Hughes v. United States, 342 U.S. 353 (1952). Further, the Government under such circumstances could unquestionably institute a new proceeding either by way of indictment or civil suit to punish the defendants for such illegal conduct. Lawlor v. National Screen Service Corp. 349 U.S. 322 (1955); Aluminum Co. of America v. United States, 302 U.S. 230 (1937).

The reason that the Government has not instituted proceedings against General Motors or General Motors

Acceptance Corporation in respect of financing has been disclosed at the hearings on H.R. 71. It is not that the Government fears that General Motors could successfully plead the defense of res judicata, as Mr. Arnold testified. The true reason, as revealed by this same witness, is that both companies have scrupulously observed the terms of the consent decree and have not violated the antitrust laws in any respect in regard to financing.

Mr. Arnold repeatedly stated (Tran. 1079, 1100, 1105) that he had undertaken investigations on behalf of a finance company and that such investigations showed, in effect, no evidence of any unlawful conduct on the part of either General Motors or General Motors Acceptance Corporation in their relationships with General Motors dealers.

The entire discussion of res judicata by the proponents of H.R. 71 is an attempt to inject into the hearings an irrelevant legal concept as a justification for legislation which cannot be justified on a factual basis. By this device, Congress is asked to abandon traditional constitutional safeguards, decree guilt, and divest property without a semblance of procedural due process.

III.        H.R. 71 Is Arbitrary,  
Unreasonable And Discriminatory  
And Violates Due Process

The substance of due process in Anglo-American jurisprudence has been the protection of persons, including corporations, from arbitrary, unreasonable and discriminatory legislation. As the Supreme Court said in Nebbia v. New York, 291 U.S. 502, 525 (1934), "the guaranty of due process," whether under the Fifth or Fourteenth Amendments, demands "that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

Jay Burns Baking Co. v. Bryan, 264 U.S. 504 (1924), illustrates the type of legislation which the Supreme Court has invalidated for failure to meet these basic constitutional requirements. There a Nebraska statute required that loaves of bread should not exceed a specified weight by more than a specified amount. The Act was held to subject bakers to unreasonable and arbitrary restrictions in violation of due process, because the statutory requirement was "not necessary for the protection of purchasers against imposition and fraud by short weights and is not calculated to effectuate that purpose."

Similarly, in Weaver v. Palmer Bros. Co., 270 U.S. 402 (1926), the Court invalidated a statute which prohibited the use of all reclaimed material, whether new or old and whether sterilized or not, in the manufacture of comfortables. Conceding that the business was subject "to all reasonable regulation," the Court declared that the "absolute prohibition" of the reclaimed material was "purely arbitrary" and therefore violated the due process clause.

The establishment of arbitrary qualifications for ownership of property has likewise been held to constitute a denial of due process. In Louis K. Liggett Co. v. Baldridge, 278 U.S. 105 (1928), the Court struck down a statute which required that every pharmacy be owned only by a licensed pharmacist and that all stockholders of a corporation operating a pharmacy be registered pharmacists. In holding that the Act was arbitrary and unreasonable, the Court said (p. 114):

"The claim, that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance. This is not enough; and it becomes our duty to declare

"the act assailed to be unconstitutional as in contravention of the due process clause of the Fourteenth Amendment."

Similarly, in Adams v. Tanner, 244 U.S. 590 (1917), the Court held unconstitutional a statute which completely barred the operation of private employment agencies on the ground that the statute was "one of prohibition, not regulation." While recognizing that useful occupations may be subject to reasonable regulation and that those "inherently vicious and harmful" may be banned, the Court pointed out that absolute prohibition of a useful occupation violates due process.

By H.R. 71, the useful — and not "inherently vicious and harmful" — right of motor vehicle manufacturers to extend credit in the wholesale and retail sale and distribution of their products in interstate commerce is not merely regulated but is absolutely prohibited. Tested by the principles of the Nebbia case, the arbitrary and unreasonable character of such legislation is manifest.

H.R. 71 is unconstitutional for the further reason that it does not meet the constitutional requirement that a classification must be based upon some difference which bears a just and reasonable relation to the classification made. The Supreme Court has



repeatedly made it clear that the power to classify by legislation is not unlimited, for there can "be discrimination of such an injurious character as to bring into operation the due process clause of the Fifth Amendment." Currin v. Wallace, 306 U.S. 1, 14 (1939); Hard v. Hodge, 334 U.S. 24 (1948); Thiel v. Southern Pacific Co., 328 U.S. 217 (1946); You Cong Eng v. Trinidad, 271 U.S. 500 (1926); Farrington v. Tokushige, 273 U.S. 284 (1927).

In Hartford Co. v. Harrison, 301 U.S. 441 (1937), the Supreme Court invalidated a state statute which permitted mutual insurance companies to act through resident, salaried employees but which denied the same privilege to stock insurance companies. Again, in Morey v. Bush, 354 U.S. 457 (1951), the Supreme Court invalidated the Illinois Community Currency Exchange Act which required licensing and regulation of firms selling and issuing money orders but specifically exempted the American Express Company. In noting that legislation creating a closed class was subject to the strictest scrutiny, the Court said (3. -5-):

"To these rules we add the caution that 'discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.' Louisville Gas Co. v. Coleman, 277 U.S. 32, 37-38; Hartford Co. v. Harrison, 301 U.S. 459, 462."

The Court recognized that not all legislative classification is offensive to the Constitution but pointed out that the classification must be based on genuine factual differences and must not be mere legislative fiat. The Court said (p. 466):

"Of course, distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the business involved. This is so even where the discrimination is by name. But the distinctions cannot be so justified if the discrimination has no reasonable relation to those differences. Hartford Co. v. Harrison, 301 U.S. 459, 463."

The Court concluded that the statutory discrimination against the competitors of American Express Company so lacked reasonable relation to any demonstrable difference between the companies that it was obnoxious to the Constitution. The Court said (p. 469):

"Taking all of these factors in conjunction—the remote relationship of the statutory classification to the Act's purpose or to business characteristics, and the creation of a closed class by the singling out of the money orders of a named company, with accompanying economic advantages—we hold that the application of the Act to appellees deprives them of equal protection of the laws."

The discriminatory classification made by H.R. 71 appears on the face of the Bill, for it arbitrarily segregates the manufacturers of certain motor vehicles and subjects them to unreasonable and discriminatory prohibitions. Excluded from the operation of the Bill are the manufacturers of numerous other motor vehicles, such as tractors, farm equipment, earth moving equipment, and the like. Such legislation can only be invalidated by the Supreme Court as an improper classification which bears no reasonable relation to any differences between these businesses.

Further, the classification made by H.R. 71 is capricious in that, as a practical matter, it affects only General Motors Corporation and the Ford Motor Company. This Bill would penalize these two manufacturers — and all future competitors — because they chose to assist their

dealers and the consuming public by providing adequate and economical finance and insurance facilities in the tradition of the free enterprise system.

By the arbitrary classification in H.R. 71, Congress would compel the consuming public to finance its purchases of motor vehicles through a select group. Rather than fostering competition, this Bill will insulate from competition a large segment of the consumer-credit market. If the Congress may constitutionally select the automotive market as the private domain — the protected child — of the non-affiliated finance companies, then it may also isolate the department store, home appliance or farm equipment markets from competition. Ultimately, by the enactment of such arbitrary classifications the public's freedom of choice would be destroyed.

The statements made by the Supreme Court in striking down the statute involved in McFarland v. American Sugar Refining Co., 241 U.S. 79 (1916), apply with equal force to H.R. 71:

"The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained. We deem it sufficient to refer to those that were

"mentioned by the District Court; a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrary beyond possible justice,—and a creation of presumptions and special powers against it that can have no foundation except the intent to destroy."

H.R. 71 would, in effect, strip General Motors of its constitutional rights, although it has done no wrong, and is, therefore, arbitrary beyond possible justice.

APPENDIX 1

Extract Of Testimony Before The Antitrust  
Subcommittee Of The Judiciary Committee Of  
The House Of Representatives, June 8, 1961

"Mr. Loevinger. General Motors has something on the order of 15,000 dealers. I don't know whether it is a few more or a few less now, but it runs into tens of thousands.

"If the Government claims that the existence of the relationship has a coercive effect and calls some of the dealers to testify to that as it did in the criminal case, then General Motors understands it has to call all of the others to testify that they weren't coerced or at least to explore their relationship to General Motors and GMAC.

"Well, if you start calling 15,000 dealers by doing nothing more than taking testimony, you can prolong the trial of a case not only for a long period but possibly even beyond the resources of the Department of Justice.

"And since time is on the side of the person who is defending, this can in and of itself be a potent weapon." (pp. 247-48)

\* \* \*

"Mr. Loevinger. But it is clear that, in any event, an antitrust suit for divestiture to the manufacturer's financing and insurance subsidiaries would take years to conclude. The General Motors bus case is already five years old and has not been decided. Divestiture of du Pont's stock in General Motors, which has been decreed by the Supreme Court, may not be fully

"accomplished until 1971, some 22 years after the Government's suit was instituted (United States v. du Pont & Co. 353 U.S. 586, (1957); United States v. du Pont & Co., Supreme Court decision of May 22, 1961).

"Any remedy of the present situation by litigation under the antitrust laws will be slow, at best. In the meantime, the competitive position of the other automobile manufacturers and financing organizations may weaken. If Congress finds this competitive imbalance sufficiently serious to warrant legislative action, it is our view that this would be consistent with the objectives of the antitrust laws. Ordinarily, the Department of Justice takes the position that these objectives should be sought by the application of the general principles of the antitrust laws to specific situations through the process of litigation.

"However, the situation with which H.R. 71 is concerned has been the object of antitrust attention for at least 23 years.

"In all candor, it must be conceded that the Anti-trust Division has not yet succeeded in taking effective action in this situation. Legislative action would certainly be swifter and more certain than any possibility offered by litigation. It seems to me it would be quite reasonable for Congress to conclude that legislative action is now called for in these circumstances." (pp. 271-72)

CLERY, GOTTLIEB, FRIENDLY & HAMILTON,  
New York, N.Y., April 8, 1959.

THURMAN ARNOLD, Esq.  
Washington, D.C.

DEAR JUDGE ARNOLD: Pursuant to your request, I am sending you with this two copies of a memorandum that sets down my views as to the constitutionality of an automobile manufacturer's financing act.

Sincerely yours,

FOWLER HAMILTON.

MEMORANDUM REGARDING THE CONSTITUTIONALITY OF AN AUTOMOBILE MANUFACTURER'S FINANCING ACT

This is a memorandum regarding the constitutionality of legislation prohibiting certain financing activities of automobile manufacturers. This memorandum sets down my opinion on the constitutionality of an act of Congress that would make it unlawful for a manufacturer of automobiles, directly or indirectly, to engage in the business of financing the purchase of automobiles.

From the information that is generally available I understand that the relevant facts are as follows:

Over 90 percent of automobiles produced in the United States are produced by three manufacturers, General Motors Corp., Ford Motor Co. and Chrysler Corp. Approximately two-thirds of all automobiles sold in the United States are sold on installment credit. Between one-third and one-half of all consumer installment credit outstanding in the United States is in the form of credit for the purchase of automobiles. At the present time only one automobile manufacturer, General Motors Corp., is engaged (through GMAC) in the business of financing the purchase of automobiles. GMAC finances almost one-half of all GM automobiles sold on credit. Ford Motor Co. has announced that it is giving consideration to the possibility of engaging in the business of financing the purchase of automobiles and the Chrysler Corp. has indicated that it might also engage in such business.

On the basis of the foregoing facts the following inferences may be drawn: Automobile financing is the single most important segment of the consumer installment credit industry in the United States. Automobile financing is susceptible to domination by financing firms under the control of three automobile manufacturers in the United States.

Three bills have been introduced in the present session of Congress that would have the effect of prohibiting an automobile manufacturer from engaging in the business of financing the purchase of automobiles. These three bills vary in the scope of their coverage. My opinion on the question of constitutionality is not an opinion in respect to any one or more of these particular bills but relates generally to legislation of this kind. To the extent that particular provisions are relevant to constitutional questions, such provisions are discussed below.

It should be noted that this memorandum is limited to the question of constitutionality and does not extend to questions of policy that do not rise to the level of constitutional issues. For example, during the congressional consideration of the Automobile Dealers Franchise Act of 1956 questions of "class legislation" were discussed in an opinion letter of the Department of Justice. The Department's criticism, however, appears to have been on grounds of policy rather than in terms of constitutional objections. Compare the Department's view on damages for past conduct with the Department's statement beginning "the bill is special legislation \* \* \*" (102 Congressional Record 10579 (1956)).

In the light of this summary, I turn to a consideration of the following aspects of the question of constitutionality:

- (1) Whether the act would be an ex post facto law in violation of article I, section 9 of the Constitution.
- (2) Whether the act would be a bill of attainder in violation of article I, section 9 of the Constitution.
- (3) Whether the act would involve a deprivation of property without due process of law in violation of the fifth amendment to the Constitution:
  - (a) Whether the factual basis is inadequate,
  - (b) Whether the limitation to a class is unreasonable, and
  - (c) Whether the loss of property value would be unreasonable.



(4) Whether the act would involve a taking of property without just compensation in violation of the fifth amendment to the Constitution.

1. *Whether the act would be an ex post facto law in violation of article I, section 9 of the Constitution*

It is my opinion that the act would not be an ex post facto law. The ex post facto prohibition applies only to laws that make past conduct or relationships criminal. (See *Mahler v. Eby*, 264 U.S. 32, 39 (1924).) Even if the proposed act imposed criminal sanctions, it would be limited to future conduct or relationships and thus no unconstitutional retroactivity would be involved. (See *United States v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 342 (1897); 102 Congressional Record 10577 (1956).) In the *Trans-Missouri* case it was argued that the application of the Sherman Act to a contract that was executed prior to the passage of the act would involve an ex post facto law. The Court rejected the argument as follows:

"It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect; that the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act. There is nothing of an ex post facto character about the act. The civil remedy by injunction and the liability to punishment under the criminal provisions of the act are entirely distinct, and there can be no question of any act being regarded as a violation of the statute which occurred before it was passed. After its passage, if the law be violated, the parties violating it may render themselves liable to be punished criminally; but not otherwise" (166 U.S. at 342).

The only past relationship that would be affected by the act presently under consideration is the ownership of GMAC by GM. The divestiture of GMAC from GM would at most involve a question of deprivation of property without due process of law rather than a question of an ex post facto law. In *North American Co. v. S.E.C.* (327 U.S. 686 (1946)), it was argued that, because the Public Utility Holding Company Act of 1935 required divestiture, in certain circumstances, of stock ownership in a subsidiary corporation acquired prior to 1935, the act involved an ex post facto law. The Supreme Court rejected the argument as follows:

"The contention also is made that the fact that §11(b)(1) requires disposition of security holdings and the termination of relationships which antedate the passage of the act is fatal to its validity. But it merely requires that such holdings and relationships shall not continue in the future. There is no punishment for past events. Certainly there is no constitutional requirement that the status quo be maintained. (See *United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290, 342" (327 U.S. at 708, n. 15).)

Similarly the argument was rejected in *American Power & Light Co., v. S.E.C.* (141 F. 2d 606 (1st Cir. 1944), aff'd, 329 U.S. 90 (1946).) as follows:

"Section 11(b)(2) [of the Public Utility Holding Company Act] as here applied is not an 'ex post facto law' in violation of the prohibition of article I, §9 of the Constitution. It is immaterial that the structures of the holding company systems may have been built up by means which were lawful prior to the passage of the Public Utility Act of 1935. Section 11(b)(2) does not seek to punish anyone for past acts, lawful when done. It merely seeks, for the future, to eliminate factors in the structures of holding company systems likely to be productive of harm to interstate commerce. In *United States v. Trans-Missouri Freight Association*, 1897, 166 U.S. 290, 342, 17 S. Ct. 540, 41 L. Ed. 1007, an antitrust case, the court rejected a similar argument on the ex post facto point" (141 F. 2d at 625).

2. *Whether the act would be a bill of attainder in violation of article I, section 9 of the Constitution*

It is my opinion that the act would not be a bill of attainder because it would not involve punishment for past activity. (See *American Communications Ass'n v. Douds*, 339 U.S. 383, 413 (1950); *North American Co. v. S.E.C.*, supra.) As long as the act would not seek to punish past stock ownership or past use of the advantages of combined control of manufacturing and financing but would merely provide for divestiture to protect the public from future harmful effects of combined control, the act would not be a bill of attainder.

3. *Whether the act would involve a deprivation of property without due process of law in violation of the fifth amendment to the Constitution*

(a) *Whether the factual basis is inadequate.*—The fifth amendment requires that legislation not be arbitrary. Thus in *Nebbia v. New York* (291 U.S. 502 (1934)), the Supreme Court stated: “\* \* \* a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts” (291 U.S. 525).

The source of such relevant facts may be common knowledge or experience. (See *Patson v. Pennsylvania*, 232 U.S. 138, 144 (1914); *Skinner v. Oklahoma*, 316 U.S. 535, 544 (1942) (concurring opinion).) While a court may make an independent determination of the existence of such underlying facts, the Supreme Court has indicated that there is a presumption of constitutionality and that, if any state of facts that could reasonably be assumed would support the legislative judgment, the act will be upheld. (See *United States v. Carolene Products Co.*, 304 U.S. 144, 153–154 (1938); *O’Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U.S. 251, 257–258 (1931); *Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392, 397 (1927).) In the *Carolene Products* case, which presented the constitutionality of the Federal Filled Milk Act, the Supreme Court made the following statement in respect to the judicial function in determining the existence of facts that supply a rational basis for legislation:

“\* \* \* But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it. Here the demurrer challenges the validity of the statute on its face and it is evident from all the considerations presented to Congress, and those of which we may take judicial notice, that the question is at least debatable whether commerce in filled milk should be left unregulated, or in some measure restricted, or wholly prohibited. As that decision was for Congress, neither the finding of a court arrived at by weighing the evidence, nor the verdict of a jury can be substituted for it” (304 U.S. 154).

In respect to the act under consideration, the record of congressional hearings will presumably contain statements of fact indicating that anticompetitive evils are likely to result from a combination of manufacturing and financing of automobiles. In my view such a factual basis would be adequate to meet the constitutional requirement.

(b) *Whether the limitation to a class is unreasonable.*—If Congress determines that an evil exists that warrants legislative correction, it may validly decide to regulate only some areas or classes on the ground that the problem is more acute in particular areas or classes or that the remedy is more appropriate to particular areas or classes or that an attitude of cautious experimentation is warranted. (See *Currin v. Wallace*, 306 U.S. 1 (1939); *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937); *Electric Bond & Share Co. v. S.E.C.*, 92 F. 2d 580 (2d Cir. 1937), aff’d, 303 U.S. 419 (1938); see also *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Semler v. Oregon State Board of Dental Examiners*, 294 U.S. 608, 610 (1935); *Keokee Consolidated Coke Co. v. Taylor*, 234 U.S. 224 (1914).)

The *Keokee* case, supra, involved State legislation that prohibited the issuance, in payment for labor, of any order not redeemable in U.S. currency. The law applied, however, only to mining and manufacturing companies, and it was argued that, since it was so limited, it was a kind of class legislation that was unconstitutional. The Supreme Court rejected the argument as follows:

"It is more pressed that the act discriminates unconstitutionally against certain classes. But while there are differences of opinion as to the degree and kind of discrimination permitted by the 14th amendment, it is established by repeated decisions that *a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the Court can see. That is for the legislature to judge unless the case is very clear.* \* \* \* The suggestion that others besides mining and manufacturing companies may keep shops and pay their workmen with orders on themselves for merchandise is not enough to overthrow a law that must be presumed to be deemed by the legislature coextensive with the practical need" (234 U.S. 227). [Emphasis supplied.]

The Carolene Products case, *supra*, involved the Federal Filled Milk Act which declared filled milk (i.e., milk compounded with any fat or oil other than milk fat) to be an adulterated article of food and prohibited its shipment in interstate commerce. It was argued that the failure to apply the rule against adulteration to other products constituted a deprivation of property without due process of law. The Supreme Court replied as follows:

"Appellee raises no valid objection to the present statute by arguing that its prohibition has not been extended to oleomargarine or other butter substitutes in which vegetable fats or oils are substituted for butterfat. The 5th amendment has no equal protection clause, and even that of the 14th, applicable only to the States, *does not compel their legislatures to prohibit all like evils, or none.* A legislature may hit at an abuse which it has found, even though it has failed to strike at another" (304 U.S. at 151). [Emphasis supplied.]

Electric Bond & Share, *supra*, involved the Public Utility Holding Company Act of 1935 which limited its regulation of holding company systems to systems in the public utility field. It was argued that that limitation constituted a violation of the due process clause. The Court of Appeals for the Second Circuit replied to the argument as follows:

"\* \* \* Holding companies controlling electric and gas companies which are local monopolies not subject to the normal restraints of competition may readily and reasonably be distinguished from other holding companies. But a distinction in legislation is not arbitrary 'if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.' \* \* \* It is unnecessary that the legislative authority exerted in the proper field embrace all the evils within its reach. *The Constitution permits cautious advance, step by step, in dealing with the evils which are exhibited in the activities within the range of the legislative power*" (92 F. 2d 591). [Emphasis supplied.]

The decision of the second circuit was affirmed by the Supreme Court before whom the argument of class legislation appears not to have been repeated (*id.*, 303 U.S. 419 (1938)).

The Steward Machine case, *supra*, involved the Federal Social Security Act of 1935 which laid a tax on employers of labor but excluded agricultural labor, domestic service in private homes and some other classes of employment and also did not apply to employers of fewer than eight persons. It was argued that the act contained an arbitrary discrimination in violation of the fifth amendment. The Supreme Court rejected the argument as follows:

"The 5th Amendment unlike the 14th has no equal protection clause. \* \* \* But even the States, though subject to such a clause, are not confined to a formula of rigid uniformity in framing measures of taxation. \* \* \* They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akin thereto. \* \* \* If this latitude of judgment is lawful for the States, it is lawful, a fortiori, in legislation by the Congress, which is subject to restraints less narrow and confining. \* \* \*

"The classifications and exemptions directed by the statute now in controversy have support in considerations of policy and practical convenience that cannot be condemned as arbitrary" (301 U.S. 584).

*Currin v. Wallace*, *supra*, involved the Federal Tobacco Inspection Act of 1935 which was challenged as discriminatory on the ground that, unlike the petitioners other warehousemen in other tobacco markets who were doing the same kind of business and were competing for patronage among the same growers were free to conduct sales without inspection and certification by Federal authorities. The Supreme Court noted that the reason for the discrimination was that " \* \* \* the

lack of a sufficient number of expert inspectors made it impracticable to supply inspection and grading at all tobacco auction markets" (306 U.S. 13). The Court continued as follows:

"Congress may choose the commodities and places to which its regulation shall apply. Congress may consider and weigh *relative situations and needs*. Congress is not restricted by any technical requirements but may make limited applications and resort to tests so that it may have the benefit of experience in deciding upon the continuance or extension of a policy which under the Constitution it is free to adopt. As to such choices, the question is one of wisdom and not of power" (306 U.S. 14). [Emphasis supplied.]

The Parrish case, *supra*, involved a State minimum wage law that was limited to women. In upholding the law over the objection that it constituted an arbitrary discrimination because it did not extend to men the Supreme Court stated:

"This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.' There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms" (300 U.S. 400). [Emphasis supplied.]

In *Sunshine Anthracite Coal Co. v. Adkins* (310 U.S. 381 (1940)), which upheld the constitutionality of the Federal Bituminous Coal Act of 1937, the Supreme Court stated that Congress " \* \* \* may single out for separate treatment, as it has done on various occasions, a particular industry and thereby remove the penalties of the Sherman Act as respects it" (310 U.S. 396).

The principles set forth in the cases discussed above were recently reaffirmed by the Supreme Court in the context of a State statute that involved a classification in respect to property taxes (*Allied Stores of Ohio, Inc. v. Bowers*, 27 U.S.L. Week 4110 (U.S. Feb. 24, 1959)). The Supreme Court upheld the constitutionality of the statute as follows:

" \* \* \* it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the equal protection clause of the 14th amendment if any state of facts reasonably can be conceived that would sustain it. \* \* \*

"In the light of the law thus well settled, how stands appellant's case? We cannot assume that State legislative enactments were adopted arbitrarily or without good reason to further some legitimate policy of the State. What were the special reasons, motives or policies of the Ohio Legislature for adopting the questioned proviso we do not know with certainty, nor is it important that we should \* \* \* we cannot say that the discrimination \* \* \* was not founded upon a reasonable distinction, or difference in State policy, or that no state of facts reasonably can be conceived to sustain it" (27 U.S.L. Week 4111-4112).

The question of "class legislation" was discussed in the Senate in connection with the Federal Automobile Dealers Franchise Act of 1956. The remarks of Senator Monroney are pertinent to the act presently under consideration as well as to the 1956 act. He stated:

"Actually, I think the primary industry of this Nation and of the world is important enough to be the subject of legislation in this field. The committees spent many, many months in careful study of the conditions in the automobile industry. But if additional legislation is necessary to cover the farm implement, the television, the radio, or the refrigerator industries, all of which have franchise agreements, let us consider legislating for them later. I do not think Congress knows enough about all those subjects, or can know enough about them, in a single period of 2 years of investigation, to legislate across that whole field" (102 Congressional Record 10581 (1956)).

The only reported case under the 1956 Act or the Federal Automobile Information Disclosure Act of 1958 is *Staten Island Motors, Inc. v. American Motors Sales Corp.* (1959 Trade Cas. Par. 69, 262 (D.N.J., Jan. 21, 1959)), which presented a question under the 1956 act. The opinion in the Staten Island case, however, did not pass on any constitutional question.

It is my opinion that the failure of the act under consideration to extend to financing by manufacturers other than manufacturers of automobiles would not constitute an unreasonable classification in view of the amount of automobile installment credit outstanding and the concentration of manufacturing in the

hands of three companies in the automobile industry. The fact that the degree of concentration of manufacturing in the areas of kitchen appliances, radios and similar products is lower than in the area of automobiles would add support to the reasonableness of the classification as would the fact that the dollar amount of credit that could be controlled by a manufacturer who financed a particular product outside the area of automobiles is lower than the amount that could be controlled by an automobile manufacturer.

(c) *Whether the loss of property value would be unreasonable.*—The question arises whether the loss of property value that may result from divestiture required under the act would constitute a deprivation of property without due process of law. If a reasonable time is allowed for divestiture so as to permit the stock of a corporate subsidiary to be distributed to the parent's stockholders or otherwise disposed of in a manner compatible with the preservation of most of the interest value of the subsidiary's stock, the only value that necessarily would be destroyed would be the amount that represents the advantages resulting from the combination of manufacturing and financing. Congress has been held to have the power to balance such injury to private interests against the possible evil effects on the public of concentration of control, and, after deciding that such evil effects are greater, to require divestiture even though divestiture would destroy the value of combined control. Congress has such power even where the stock ownership required to be divested was acquired prior to the passage of the regulatory Act. The statement of the Supreme Court in *North American Co. v. S.E.C.* (327 U.S. 686 (1946)), in respect to the "taking" of property is applicable to the question of deprivation of property as well. The Supreme Court stated:

"The taking of property is said to involve 'a vast destruction of values.' Reference is made in this respect to the valuable right of North America's shareholders to pool their investments and thereby obtain the benefit alleged to flow from efficient, common management of diversified interests. But Congress balanced the various considerations and concluded that this right is clearly outweighed by the actual and potential damage to the public, the investors and the consumers resulting from the use made of pooled investments. Under such circumstances, whatever value this right may have does not foreclose the protection of the various interests which Congress found to be paramount. See *Northern Securities Co. v. United States*, *supra*. Nor does the value of North American's contributions as a holding company to the earning power and intrinsic value of the assets divested pursuant to section 11(b)(1) bar Congress from requiring such divestment. Congress has concluded from the extensive studies made prior to the passage of the act that the economic advantages of a holding company at the top of an unintegrated sprawling system are not commensurate with the resulting economic disadvantages. The reasonableness of that conclusion is one for Congress to determine. The fact that valuable interests may be affected does not, by itself, render invalid under the due process clause the determination made by Congress."

\* \* \* \* \*

"\* \* \* And there are provisions in the act guarding against unduly rapid divestment or liquidation. In the light of such statutory and judicial safeguards and in the absence of any alleged unfair plan of divestment, we cannot say that North American's shareholders are adversely affected, from a constitutional standpoint, by the operation of section 11(b)(1). North American's reliance on such cases as *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, is therefore misplaced" (327 U.S. 708, 709-710).

In my view the act under consideration would not involve an unconstitutional loss of property value if the provision for enforcement of the act would allow a court or a regulatory agency to approve a plan of divestiture that could be carried out over a reasonable time.

#### 4. *Whether the act would involve a taking of property without just compensation in violation of the fifth amendment to the Constitution*

For reasons stated above under question 3(c), I conclude that the act would not involve a "taking" of property in violation of the fifth amendment. (See also *American Power & Light Co. v. S.E.C.*, 329 U.S. 90, 106-07 (1946).)

SOURCE: Hearings before the Senate Judiciary Committee, Subcommittee on Antitrust and Monopoly, 86th Congress, 1st Session, on S. 838 and S. 839, pp. 472-477, 1959.

(The information referred to at p. 461 follows:)

# GENERAL MOTORS ACCEPTANCE CORPORATION

GENERAL MOTORS BUILDING  
300 CALIFORNIA STREET  
NEW YORK 19, N. Y.

BRANCHES  
THROUGHOUT  
THE WORLD

EXECUTIVE OFFICES  
CABLE ADDRESS  
GENMOTAC

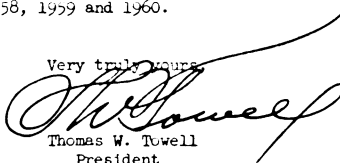
August 2, 1961

Mr. Herbert N. Maletz, Chief Counsel  
Antitrust Subcommittee of the Committee  
on The Judiciary  
United States House of Representatives  
Room 230, House Office Building  
Washington, D. C.

Dear Mr. Maletz:

In accordance with your request appearing on Page 459 of the official transcript of Hearings on H.R. 71 before the Antitrust Subcommittee of The Judiciary Committee of the House of Representatives, attached are three (3) copies of an estimate of General Motors Acceptance Corporation's dollar purchases of sales instalment contracts as percentages of dollar volume of instalment sales of General Motors dealers for the years 1956, 1957, 1958, 1959 and 1960.

Very truly yours,



Thomas W. Towell  
President

GENERAL MOTORS ACCEPTANCE CORPORATION  
DOLLAR VOLUME OF SALES INSTALMENT CONTRACTS

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On August 1, 1961, Mr. Maletz, chief counsel for the Subcommittee, clarified his request for information reported on Page 459 of the transcript of the hearing, on June 9, 1961. The last statement by counsel on Page 459 is now as follows:

Mr. Maletz. Will you then provide the information covering only the purchase of sales instalment contracts from General Motors dealers?

First, the percentage, by dollar volume, of GMAC purchase of sales instalment contracts covering new cars in the years 1956, 1957, 1958, 1959, 1960; and, second, the percentage of GMAC purchase of sales instalment contracts in those same years of used cars.

GMAC has available the dollar volume of sales instalment contracts purchased by it from General Motors dealers, both new and used, in those years. However, GMAC cannot arrive at accurate percentages as requested by counsel because GMAC does not know the total dollar volume of sales instalment contracts entered into by General Motors dealers, both new and used. It is, of course, possible to approximate the total dollar volume involved in the purchase of cars from General Motors dealers on credit regardless of where financed. This can be done by (1) applying the percentage of new cars

estimated by the Federal Reserve Board as being sold on time, and an assumed 65% for time sales of used cars, to total General Motors dealer unit sales, and then (2) multiplying the resulting figures by the FRB total industry figures for the average amount of note on both new and used cars. This would give a total dollar amount of instalment credit extended on cars purchased from General Motors dealers under all forms of credit, but it would not give the portion of this total sold by General Motors dealers through sales instalment contracts. In order to develop this percentage several further assumptions must be made:

- (1) That the percentage of credit purchases from General Motors dealers financed directly by banks is the same as the overall percentage of credit financed directly by banks;
- (2) That the same percentage relationship applies to General Motors dealers as to non-General Motors dealers with respect to credit sales of automobiles financed by organizations other than banks and sales finance companies, e.g., credit unions, etc;
- (3) That all of these assumed credit sales above in (1) and (2) are in fact concluded between the financing source and the purchaser without the dealer being involved.

Using these assumptions, none of which GMAC accepts as being factual, the following GMAC dollar purchases of sales instalment contracts



as estimated percentages of dollar volume of instalment sales of General Motors dealers are developed:

GMAC PURCHASES BY DOLLAR VOLUME AS ESTIMATED PERCENTAGES  
OF TOTAL GM DEALER INSTALMENT SALES

---

	<u>1956</u>	<u>1957</u>	<u>1958</u>	<u>1959</u>	<u>1960</u>
NEW	56%	61%	57%	62%	67%
USED	52%	53%	55%	55%	57%

New and used passenger cars only.

Submitted August 2, 1961.

(Whereupon, at 4:55 p.m., the committee adjourned subject to call of the Chair.)









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